COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12 November 2008

NON-CONFIDENTIAL VERSION*

OF THE COMMISSION DECISION OF 12 NOVEMBER 2008

Case COMP/39125 – Carglass

COMMISSION DECISION

of 12 November 2008

relating to a proceeding pursuant to Article 81 of the EC Treaty

and Article 53 of the EEA Agreement

(COMP/39.125 – Carglass)

(Only the English, French and Dutch texts are authentic)

(Text with EEA relevance)

* Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as […].

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[1], and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission decision of 18 April 2007 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[2],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case[3],

Whereas:

1. INTRODUCTION

1.1. Addressees

(1) This Decision concerns arrangements between the following undertakings active in the automotive glass sector in the EEA:

- Asahi Glass Co. Ltd
- AGC Flat Glass Europe SA/NV (formerly Glaverbel SA)
- AGC Automotive Europe SA
- Glaverbel France SA
- Glaverbel Italy S.r.l.
- Splintex France Sarl
- Splintex UK Limited
- AGC Automotive Germany GmbH
- La Compagnie de Saint-Gobain SA
- Saint-Gobain Glass France SA

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1 OJ L 1, 4.1.2003, p.1.
2 OJ L 123, 27.4.2004, p. 18.
3 OJ

– Saint-Gobain Sekurit Deutschland GmbH & Co. KG
– Saint-Gobain Sekurit France SA
– Pilkington Group Limited
– Pilkington Automotive Ltd
– Pilkington Automotive Deutschland GmbH
– Pilkington Holding GmbH
– Pilkington Italia Spa
– Soliver NV.

1.2. Summary of the infringement

(2) This Decision arises out of investigations carried out by the Commission in February and March 2005 pursuant to Article 20(4) of Regulation (EC) No 1/2003 at the premises of the main producers of carglass in the EEA and concerns the automotive glass industry, in particular the supply of automotive glass to car manufacturers and their network of authorised dealers.

(3) The addressees of this Decision participated in a single and continuous infringement of Article 81 of the Treaty and Article 53 of the Agreement on the European Economic Area (hereinafter 'EEA Agreement'). The infringement consisted in concerted allocation of contracts concerning the supply of carglass pieces and/or carsets[4] for all major car manufacturers in the EEA, through coordination of pricing policies and supply strategies aimed at maintaining an overall stability of the parties' position on the market concerned. In this respect, the competitors also monitored the decisions taken during these meetings and contacts and agreed on correcting measures in order to compensate for each other when previously decided allocations of glass pieces proved insufficient in practice to ensure an overall degree of stability in their respective market shares.

(4) The cartel lasted […] from 10 March 1998 to 11 March 2003.

1.3. Value of sales

(5) In 2002, namely the last full business year of the infringement, the value of sales of the product concerned by this Decision to Original Equipment Manufacturers (hereafter "OEM") in the EEA amounted to approximately EUR [2 000-2 500] million.

[4] A carset generally consists of a windscreen, sidelights and backlights, normally 1 windscreen, 1 backlight and 6 sidelights (see recital (7) for description of product).

PART 1: FACTS

2. THE INDUSTRY

2.1. The product

(6) Automotive glass or **carglass** is made from float glass, that is the basic flat glass product category. In previous merger decisions[5] the Commission has defined the flat glass sector at two levels: level 1 corresponds to the production of raw float glass whereas at level 2 most of the raw float glass is subject to further processing. Within level 2 the main distinction is between the sectors of automotive and general trade.

(7) The automotive products consist of different glass parts such as windshields or windscreens, sidelights (windows for front and back door), backlights (rear window), quarter lights (back window next to rear door window), and sunroofs. Abbreviations are used by the carglass suppliers when referring to specific glass parts.[6] The products concerned have specific options and are made with different glass techniques such as windscreens with rain sensor, tinted glass or athermic glass; tempered front door sidelights; laminated front door sidelights; tempered rear door sidelights; laminated rear door sidelights; and fixed backlights.[7]

(8) The glass parts can moreover be tinted in different colour grades as opposed to clear glass. "Privacy" glass, or "dark tail" glass, is a specific category of tinted glass which reduces light and heat transmission inside the car and can be defined as any glass whose light transmission falls below 70%.[8] The Saint-Gobain group is market leader with its brand 'Venus' available in green and grey with different thicknesses and transmission properties.[9] 'Sundym', which is Pilkington's brand, is grey and has a similar range of varieties. Finally, 'Athergreen' or 'Atherman', which is green, is the AGC brand.

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5 Case IV/M.358 – Pilkington – Techint/SIV of 21/12/1993 and Case no IV/M.1230 - Glaverbel/PPG of 7/8/1998.

6 Abbreviations used by the carglass suppliers (with some variations not mentioned here): "WS": windshield/windscreen, "SL": sidelights (window for front door), "BL": backlights (window for rear door), "QL": quarterlights, "RW": rear windows and sunroofs (name of brand often referred to, e.g. […]). Moreover, WSH stands for windscreen heated, CWS for coated windscreen, FD for front door window and RD for rear door window. See p. 17 for German abbreviations, see […] answer of 9 March 2006, file 59 for French abbreviations, p. 45585, see Saint-Gobain's Article 18 response of 16 June p. 37, answer to question 75 for abbreviations: "PBF" stands for "pare-brise feuilleté" or laminated windshield; "PB à couche" stands for reflective windshield; "PB à couche chauffant à fil" stands for reflective and heatable windshield with electric wires; "DDP" stands for Détecteur de pluie (rain detector); "LUCH" stands for Back window; "PAV" stands for "portes avant" (front doors); "PAR" stands for "portes arrières" (rear doors); "FAR" stands for fixed sidelights; "CUS" stands for "custode" (quarter window); "ENCP EPDM" means plastic encapsulation; "ANT" stands for antenna; "PBF Acoustique" stands for acoustic windshield and "PB à couche PET" stands for reflective anti-heat (solar control) windshield.

7 See […] Article 18 response of 9 March 2005, answer to question 2, p. 16897.

8 See Saint-Gobain's response of 16 June 2006, reply to question 18, p. 10, p. 45559.

9 See Saint-Gobain's response of 16 June 2006, reply to question 18, p. 10 and annex 9, p. 45559 and p. 45694-45695.

(9) Carglass is a kind of 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[10] which is mainly used in windscreens, and toughened glass[11] (or body glass/tempered glass) which is mainly used in side and rear windows where there is need for extra strength. In addition, carglass manufacturers offer carglass with additional features such as built-in antennas for radio and mobile phones, rain sensors for automatic wiper activation or solar heat reduction.

(10) The Commission has made a further distinction between automotive glass supplied to the OEM both for first assembly into vehicles and for further resale to their authorised repairers as spare parts (that is to say, the Original Equipment or "OE" channel), on the one hand, and automotive glass for replacement ("ARG") which is sold directly by carglass producers to the aftermarket on the other hand.[12] The aftermarket consists of repairers authorised by the car manufacturers and independent repairers (the so-called "independent after-market", or "IAM"), which concerns auto replacement glass sold to repair chains (such as the […] chain), other carglass wholesalers, repairers, body repair shops and fitters.

(11) Although the production of carglass sold to the aftermarket sometimes takes place at the same production lines as the carglass for the OE channel, the supply and demand characteristics are totally different for the following reasons.[13] Firstly, the customers are different and require a different distribution system. While sales to OEM are in large quantities, sales to the IAM are in their majority in small quantities and need a completely different logistic. Secondly, the price for a piece of carglass is considerably higher when sold directly to the replacement market than to OEMs. Thirdly, all three major producers of carglass have separate legal divisions for OEM and IAM. Fourthly, the glass pieces do not carry the logo of the car manufacturers and are, therefore, marketed differently. Lastly, the ARG divisions of the carglass manufacturers also buy from other suppliers and, therefore, have a trading/wholesale function which is not the case for OEM supplying their own network. The three major OE suppliers have well-developed independent aftermarket distribution and wholesale networks in the EEA through dedicated ARG subsidiaries with separate management teams: Autover in the case of Saint-Gobain, Pilkington AGR for Pilkington and AGC Automotive Replacement Glass for Glaverbel.

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10 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 PVB, namely an interlayer, is inserted.

11 Toughened glass, also known as tempered glass, is produced by heating the glass to high temperatures of greater than 640° C followed by differential cooling and bending of a pre-cut piece of glass, which is subsequently rapidly cooled to compress the surface of the glass.

12 Case IV/M.358 – Pilkington – Techint/SIV of 21/12/1993 and Case IV/M.1230 - Glaverbel/PPG of 7/8/1998. Of the global automotive trade sector in the Community the parties in case M.1230 estimated that in 1998 the OEM market represented approximately 85% by value and the ARG market 15%.

13 See replies to question 8 of the questionnaire sent on 26 January 2006 by Saint-Gobain of […], p. 18656 – 18657; by ACG of 17 February 2006 p. 13690 – 13691; by Pilkington of […], p. 15571; by […], p. 15927; by […], p. 13785.

(12) This Decision relates only to carglass supplied to the OE channel for use in passenger cars and light commercial vehicles (below 3.5 tonnes).

2.2. The market players

2.2.1. Undertakings subject to the present proceedings

2.2.1.1. Saint-Gobain

(13) La Compagnie de Saint-Gobain SA (hereafter "**Saint-Gobain**") is a French-based listed company and the ultimate parent company of a global group of companies active in the production, processing and distribution of materials (glass, ceramics, plastics, cast iron, etc.). The total consolidated turnover of the group in 2007 was EUR […] million. The Flat Glass Sector is one of five business lines of Saint-Gobain. It brings together Saint-Gobain's four main flat glass activities, the manufacture of basic flat glass products, the processing and distribution of glass for the building industry, flat glass products for the automotive industry and the production of specialty glass. Saint-Gobain's wholly owned subsidiary dealing with flat glass (including carglass) is called Saint-Gobain Glass France SA which had in 2007 a consolidated turnover of EUR […] million.

(14) Saint-Gobain's carglass activities are grouped under the Saint-Gobain Sekurit ("SGS")-umbrella, which is part of the Flat Glass Sector led by […].[14] SGS is not a legal entity but a business structure within Saint-Gobain. Under the SGS-umbrella there are several national companies such as Saint-Gobain Sekurit Deutschland GmbH & Co. KG in Germany and Saint-Gobain Glass France SA in France.[15] For the purposes of this Decision, all the entities belonging to the Saint-Gobain group of companies are collectively referred to as "Saint-Gobain".

(15) During the February and March 2005 inspections, the Commission inspected the premises of the following Saint-Gobain subsidiaries: Saint-Gobain Glass France SA; Saint-Gobain Sekurit France SA; Saint-Gobain Sekurit Deutschland GmbH & Co. KG; and Saint-Gobain Oberland AG.

2.2.1.2. Pilkington

(16) Pilkington Group Limited (formerly Pilkington plc, hereafter "**Pilkington**") is one of the largest manufacturers of glass and glazing products for building, automotive and related technical markets world-wide. In the *pro-forma* financial year ended on 31 March 2008 Pilkington generated annual revenues of GBP […] million, that is approximately EUR […] million[16].

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14 See p. 48029-48030, Saint-Gobain's Article 18 response of 4 October 2006, p. 3, answer to question 2.

15 http://www.saint-gobain-sekurit.com/en/index.asp?nav1=AU&nav2=AUK

16 In its Article 18 response of 20 January 2008 Pilkington stated that since 16 June 2006 the company, as a wholly owned subsidiary of NSG UK Limited, ceased to prepare audited consolidated statements. The company NSG UK was incorporated on 6 October 2005 and the first financial period ended on 31 March 2007. The income statement for that year was therefore only a pro-forma statement to make it comparable with the previous ones. Concerning the financial year ended on 31 March 2008, in the response of 15 June 2008 to the Article 18 request for information of 2 June 2008, Pilkington stated that

Since 16 June 2006 Pilkington has been a wholly owned subsidiary of the intermediate holding company NSG UK Enterprises Limited, which in turn is wholly owned by the Japan-based company Nippon Sheet Glass Company Ltd.

(17) Pilkington's carglass business is grouped under the name Pilkington Automotive. For most of the EEA-States, there are national subsidiaries such as Pilkington Automotive Deutschland GmbH and Pilkington Italia SpA, all these subsidiaries being (indirectly) wholly owned by Pilkington. For the purposes of this Decision, all the entities belonging to the Pilkington group are collectively referred to as "Pilkington".

(18) During the February and March 2005 inspections, other than the group holding company Pilkington plc, the Commission inspected the premises of the following Pilkington plc's subsidiaries: Pilkington Automotive Deutschland GmbH; Pilkington Italia SpA and Pilkington Automotive Ltd.

2.2.1.3. Asahi Glass Co Ltd

(19) Asahi Glass Co Ltd. (hereafter "**Asahi**") is a Japanese producer of glass, chemicals and electronic components. In 2007 the world-wide turnover of Asahi was approximately EUR 10 426 million. Since 1981 Asahi has owned a majority stake in the Belgian firm Glaverbel SA/NV (hereafter "**Glaverbel**"), which was [50-60]% in 1997 and increased to [80-90]% in May 2002. Since 15 December 2002 Asahi has owned 100% of Glaverbel.[17] On 1 September 2007 Glaverbel changed its name into **AGC Flat Glass Europe SA/NV**. To clarify, AGC Flat Glass Europe SA/NV is the addressee of this Decision. However, in this Decision it is also referred to by its old name, namely Glaverbel.

(20) Carglass in Europe is produced and distributed by an (indirectly) wholly owned subsidiary of Glaverbel, AGC Automotive Europe SA (hereafter "**AGC Automotive**"). Prior to 1 January 2004, the name of AGC Automotive was Splintex Europe SA and, prior to January 2002, AS Technology. Until 2001 the automotive glass activities were carried on by another Glaverbel subsidiary, Splintex SA, from which, on 31 May 2001, AS Technology, another Glaverbel subsidiary, acquired the carglass activities. AS Technology changed its name to Splintex Europe SA and Splintex SA was liquidated on 26 January 2002[18]. AGC Automotive Germany GmbH, Splintex UK Limited, Glaverbel France SA, Splintex France Sarl as well as Glaverbel Italy Srl, all subsidiaries of Glaverbel, were also involved in the events described in this Decision. For the purposes of this Decision, the entities mentioned in recital 19 and this recital are collectively referred to as "**AGC**". In 2007, Glaverbel's total world-wide consolidated turnover amounted to approximately EUR […].

GBP were converted into EUR by Pilkington using the average of the official ECB exchange rate for the period in question (4/2007-3/2008), namely EUR 1 : GBP 0.70634.

17 See Article 18 response of 13 October 2006 from Asahi Glass Co. Ltd, p. 48111.

18 See excerpt from the Moniteur Belge, p. 49800-49803.

(21) During the February […] 2005 inspections, the Commission inspected the premises of Glaverbel and AGC Automotive.

2.2.1.4. Soliver

(22) Soliver NV (hereafter "**Soliver**") is a smaller, family-owned Belgian glass manufacturer. Since it does not have in-house flat glass production, it has to buy the raw glass from the integrated companies such as Saint-Gobain. Soliver is active in the sector of automotive and building glass. It has two subsidiaries, which also produce carglass: Soliver Waregem NV in Belgium and Soliver France SA in France. In 2007, the total turnover of Soliver was approximately EUR […] million.

(23) During the February 2005 inspections, the Commission inspected the premises of Soliver in Roeselare.

2.2.2. Other market players

2.2.2.1. Guardian Industries Corp

(24) Guardian Industries is one of the world's largest manufacturers of flat glass and fabricated glass products, headquartered in the United States. Guardian's wholly owned European subsidiary Guardian Europe S.A.R.L., based in Luxembourg, manufactures and supplies carglass to the EEA car industry.

2.2.2.2. PPG Industries Inc

(25) PPG Industries Inc (hereafter "**PPG**") is a diversified US-manufacturer that manufactures and supplies among others flat glass and fabricated glass. Total turnover of PPG in 2005 was EUR […] million. PPG sold its entire European automotive glass business to Glaverbel in 1998.[19] However, PPG supplies to both OEMs and ARG customers in Europe from its United States and Canadian plants.

2.2.2.3. Other suppliers

(26) Apart from the suppliers mentioned above there are some other suppliers located outside the EEA with very little turnover in the EEA whose combined share is less than 1%. In early 2000, Renault and Fiat started to work with Traykya Cam, a Turkey-based glass supplier, and in 2005 Fuyao Glass entered the EEA market as well.[20]

2.3. Description of the industry

2.3.1. Supply

(27) The bus and truck sectors and specialised transports sectors apart, the carglass suppliers focus on the light vehicle industry, in particular

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[19] See case COMP/M.1230 Glaverbel/PPG of 7 August 1998.

[20] See Saint-Gobain Glass France's Article 18 response of 24 February 2006, p. 16.

passenger cars.[21] Vehicle manufacturers' needs for their car models are clearly differentiated, as each type of window has specific features both from a technical and design point of view. These requirements for innovative shaping and for technical innovations such as solar heat reduction or rain sensors have favoured large integrated suppliers with a global reach. There are very few global players, among them AGC, Pilkington and Saint-Gobain, which are also by far the three leading suppliers. Other suppliers like Soliver have a rather regional footprint and are often lacking the technical expertise in particular for complex and demanding windshields. While the big three are capable of offering the entire carglass set for all types of vehicles, smaller suppliers often bid for selected parts of the glazing only.

(28) For most of the supplies the carglass manufacturers are called "tier 1" suppliers, that is to say, they deliver directly to the car manufacturers. In some instances, however, they are "tier 2" (sub-supplier) only. Such a situation occurs for instance when carglass is supplied to an encapsulator such as […], or when it is supplied to a manufacturer of sunroofs, such as […] or […]. Whenever the carglass manufacturer acts as a "tier 2" supplier, it is not involved in negotiations about the price of the glass, which occur always between the "tier 1" supplier and the car manufacturer.

2.3.2. Demand

(29) The EEA is the only region where all the world's major car manufactures have a production facility, including the major Japanese and Korean groups. The demand side is less concentrated than the supply side, although several mergers and alliances have led to an increase in concentration of the demand for carglass. During the period referred to in this Decision the four largest vehicle manufacturers accounted for more than 60% and the six largest for more than 80% of the production of light vehicles in the EEA. The major groups of car manufacturers with European production were negotiating the supply of carglass usually centrally for all own and affiliated brands and are listed by decreasing order of market share: Volkswagen (brands VW, Audi, Skoda, Seat and Bentley), PSA (Peugeot and Citroën), Renault (Renault, Dacia), Ford (Ford, Volvo, Jaguar and Land Rover), General Motors (Opel, Saab, Chevrolet and Vauxhall), Fiat (Fiat, Lancia, Alfa Romeo and Iveco), DaimlerChrysler (Mercedes, Chrysler, Smart and Mitsubishi), BMW and Nissan.[22] It has to be noted that GM and Fiat had a joint global purchasing from 2000 until at least 2005 and that Renault and Nissan operated a joint venture during the relevant period.[23]

(30) Many car models are produced in different versions. These versions are referred to as 'body type', for example, the 3-door, 5-door, estate. Almost all car manufacturers have internal code names to be able to distinguish not

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21 See p. 48002-48017, Document entitled "Pilkington supplier handbook", see http://www.pilkington.com/resources/6254_supphb_0106.pdf, also available in file 177.

22 While there are additional car brands belonging to these groups, such as […], only those which are of relevance to this case have been named.

23 See Pilkington's Article 18 response of 30 May 2006, p. 23, p. 40288.

only car models which have borne the same name for decades such as the BMW series 3 or the Volkswagen Golf, but also to distinguish the various body types of a certain model. These code names usually consist of a capital letter and numbers. Whenever appropriate this Decision refers to both the code name and the name under which a certain model is marketed.

(31) In relation to privacy glass, this category of dark tinted glass is an option frequently included in the request for quotation from car manufacturers. It is important that all the glass of a car is harmonious in appearance (colour and darkness). As a result, car manufacturers will generally select a particular glass type for the privacy glass option.

(32) The basic driver of demand for carglass is the number of vehicles built. However, there is an additional driver, which is the amount of glass used per vehicle. Moreover, due to styling trends, the glazing has become more complex. Although carglass is made from flat glass, it is rarely flat. Instead, most glazing for cars is curved, in particular the windscreen. The glazing can be bent in one direction or even two which makes it a complex piece of carglass. All these factors have contributed to an increasing market value during the period under investigation.

2.3.3. The geographic scope

(33) Carglass can and does travel significant distances. In terms of competitive conditions the OE market is homogenous at EEA level. Car manufacturers have centralised their purchasing decisions at headquarter level and negotiate EEA-wide deals. For example, the Volkswagen group decides on purchasing also for its Spanish subsidiary SEAT. The suppliers of carglass have adapted to this development. Therefore, the OE carglass market is considered to be EEA-wide.

2.3.4. Industry figures and shares

(34) There are only three glass groups with global automotive glazing capability and presence. Saint-Gobain, Pilkington and AGC account for [70-80] of the world's OE glazing requirements. Saint-Gobain, Pilkington and AGC are also the main suppliers of OE glass parts for new passenger vehicles in the EEA, jointly accounting for more than 90% of all deliveries. Estimated EEA shares of carglass sales for the years 1998 to 2003 for passenger cars and light commercial vehicles (below 3.5 tonnes) in respect to the main OE players are set out in Table 1:[24]

Table 1: EEA share of sales (in value)

[24] See replies to question 11 of the questionnaire sent on 26 January 2006 by Saint-Gobain of 24 February 2006, p. 18660, […] by Pilkington of 24 February 2006, p. 15574, by Soliver of 10 February 2006, p. 13110, by […] of 15 February 2006, p. 13664, by […] of 21 February 2006, p. 13786.

Year	Saint-Gobain	Pilkington	AGC	Soliver[25]	Guardian	PPG	others	Total sales (bl€)
1998	[40-50]%	[30-40]%	[15-25]%	[<5]%	[<5]%	[5-10]%	<1%	[1-2]
1999	[40-50]%	[30-40]%	[15-25]%	[<5]%	[<5]%	[<5]%	<1%	[1-2]
2000	[40-50]%	[30-40]%	[15-25]%	[<5]%	[<5]%	[<5]%	<1%	[2-3]
2001	[40-50]%	[30-40]%	[15-25]%	[<5]%	[<5]%	[<5]%	<1%	[2-3]
2002	[40-50]%	[30-40]%	[15-25]%	[<5]%	[<5]%	[<5]%	<1%	[2-3]
2003	[40-50]%	[20-30]%	[15-25]%	[<5]%	[<5]%	[<5]%	<1%	[2-3]

NB: Source: Commission's own estimates based on the parties' replies to the Article 18 letters of 26 January 2006 (answers to question 11 in combination with question 13, see replies p. 14180 (Saint-Gobain), 14453 (Pilkington), 13550 (AGC) , 13104 (Soliver). Note that the significant increase of AGC's market shares in 1999 is the result of the merger between AGC and PPG's operations in Europe. Note also that the decrease of Pilkington's share in 2003 is attributable mainly to a decrease of the relative value of the pound sterling against the euro and does not imply any substantial change in volume terms.

(35) The EEA leader in the carglass sector is Saint-Gobain with a share of sales of between […]% and […]%, followed by Pilkington with a share of between […]% and […]%. AGC had a share of between […]% and […]% in the relevant period. However, there was a structural change in 1998 when Glaverbel acquired the European activities of PPG. Therefore, taking account of this acquisition, it can be seen from Table 1 that shares of sales were remarkably stable during the period with which this Decision is concerned.

2.4. Trade between Member States

(36) Carglass production is concentrated in a certain number of sites located in various European countries. During the reference period the producers sold their products within the EEA directly to end users,that is to say, the car manufacturers, through a network of subsidiaries.

(37) Therefore, during the period 1998 to 2003, there were important trade flows in the EEA and, accordingly, a substantial volume of trade between Member States and the EFTA States which are Contracting Parties to the EEA Agreement as regards carglass.

[25] According to Soliver's own estimation, its market share in carglass including commercial vehicles and the IAM amounts to […]%, see documents labelled DV10 and DV11, p. 596-600 and p. 601-605. This share includes also other products such as glazing for commercial vehicles and IAM products. The calculation in the table is based on figures provided by Soliver in the Article 18 response of 10 February 2006 (answers to questions 11 and 13), see p. 13110.

3. PROCEDURE

3.1. The Commission's investigation

(38) By letter of 7 October 2003[26], the Commission received information from a German lawyer, acting on behalf of an unidentified client, that carglass manufacturers had put in place certain agreements and concerted practices with a view to exchanging price and other sensitive information and allocating carglass supplies between each other for certain vehicle manufacturers and car models. Following contacts with the Commission, the informant provided additional information by letter of 10 March 2004.[27]

(39) On 22 and 23 February 2005, the Commission carried out inspections in Belgium, Germany, France, the United Kingdom and Italy at the premises of Saint-Gobain, Pilkington, AGC and Soliver. On 15 March 2005, the Commission carried out a second round of inspections in France, Germany and the United Kingdom at the premises of Saint-Gobain [and] Pilkington […].

(40) On 26 January 2006, the Commission sent requests for information under Article 18 of Regulation (EC) No 1/2003, hereinafter "Article 18 requests for information", to the following glass manufacturers: AGC, Glaverbel, Guardian, PPG, Pilkington, Saint-Gobain, Soliver as well as to the trade association Groupement européen de producteurs de verre plat, ("GEPVP").[28]

(41) The companies and GEPVP responded to those requests for information by letters dated 10 February 2006 (Soliver)[29], 15 February 2006 (Guardian)[30], 17 February 2006 (AGC Automotive and Glaverbel)[31], 21 February 2006 (PPG), 24 February 2006 (Pilkington)[32], 24 February 2006 (Saint-Gobain)[33] and 27 February 2006 (GEPVP)[34].

(42) On 7 February 2006, the Commission sent Article 18 requests for information to the following car manufacturers: […].[35]

(43) The car manufacturers responded to those requests for information by letters dated 24 February 2006 ([…])[36], 8 March 2006 ([…])[37], 3 March 2006 ([…])[38], 24 February 2006 ([…])[39], 29 and 30 March 2006 ([…])[40], 3

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26 See p. 7, letter from informant of 7 October 2003.
27 See letter of 10 March 2004, p. 4 et seq. of the file.
28 See p. 12679 et seq.
29 See p. 13104-13112.
30 See p. 15887.
31 See p. 13684.
32 See p. 15567.
33 See p. 18648.
34 See p. 14732 to 15556.
35 See p. 12679 et seq.
36 See p. 13922.
37 See p. 16758.
38 See p. 19161.
39 See p.14168 and p. 17139 (including annexes).

March 2006 ([…])[41], 23 February 2006 ([…])[42], 13 March 2006 ([…])[43], 10 March 2006 ([…])[44], 9 March 2006 ([…])[45], 4 April 2006 ([…])[46], 25 April 2006 ([…])[47], 3 March 2006 ([…])[48] and 3 March 2006 ([…])[49].

(44) On 3 March 2006, the Commission sent an Article 18 request for information to […]. […] responded to this request for information by letter dated 16 March 2006.[50]

(45) On 7 April 2006, the Commission sent Article 18 requests for information to AGC Automotive, Glaverbel, Pilkington and to two trade associations, the Fédération des chambres syndicales de l'industrie du verre ("FIV") and the Associazione Nazionale degli Industriali del Vetro ("Assovetro").[51]

(46) The companies and the two associations responded to those requests for information by letters dated 19 May 2006 (AGC Automotive and Glaverbel)[52] and 30 May 2006 (Pilkington)[53]; 26 April 2006 (Assovetro) [54] and 3 May 2006 (FIV)[55]

(47) On 5 May 2006, the Commission sent an Article 18 request for information to Soliver.[56] The company responded by letter dated 23 June 2006.[57] The same day an additional Article 18 request for information was sent to Pilkington. This company responded by letter dated 30 May 2006.[58]

(48) On 8 May 2006, the Commission sent an Article 18 request for information to Saint-Gobain.[59] The company responded by letter dated 16 June 2006.[60]

(49) On 13 September 2006, the Commission sent Article 18 requests for information letters to Saint-Gobain, Pilkington, Glaverbel and Asahi.[61] The companies responded by letters dated 22 September 2006 (Pilkington)[62], 6

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40 See p. 19571.
41 See p. 15873.
42 See p. 13885 (No production in Europe so no response). Answer also on behalf of […].
43 See p. 16248.
44 See p. 16539.
45 See p. 16897.
46 See p. 17348.
47 See p. 19419.
48 See p. 16348.
49 See p. 15997.
50 See p. 17014. See p. 35499 for the non-confidential version of the response.
51 See p. 19664 et seq.
52 See p. 26078.
53 See p. 40257.
54 See p. 19969.
55 See p. 20032.
56 See p. 19751.
57 See p. 34539.
58 See p. 40256.
59 See p. 19808.
60 See p. 45538 et seq.
61 See to Saint-Gobain, p. 45454, to Pilkington, p. 45465, to Glaverbel, p. 45431, to Asahi, p. 45413.
62 See p. 45502.

October 2006 (Saint-Gobain)[63] and 13 October 2006 (Glaverbel and Asahi)[64].

(50) On 3 October 2006, the Commission sent an additional Article 18 request for information to Pilkington.[65] The company responded by letter dated 13 October 2006. On 15 and 26 January 2007, the Commission sent Article 18 requests for information to AGC Automotive to which the company responded by letters dated 19 January 2007 and 2 February 2007. On 22 and 23 February 2007 the Commission sent additional questions to AGC Automotive to which it responded by two separate e-mails on 27 February 2007. The Commission moreover sent an Article 18 request for information to Pilkington on 15 January 2007. The company replied by letter dated 19 January 2007. The Commission finally sent additional Article 18 requests for information to Saint-Gobain on 26 and 31 January 2007 to which the company responded by letter dated 2 February 2007.[66]

(51) On 18 April 2007, the Commission initiated proceedings in this case and adopted a Statement of Objections subsequently notified to the addressees of this Decision.

(52) The addressees were granted access to the Commission's investigation file by means of a DVD, sent shortly after the Statement of Objections, which contained accessible material in the file. Regarding the oral corporate statements, the parties were given the opportunity to listen to the recordings and to read the transcripts at the Commission's premises. In the period following the access to file (from end of April to beginning of July 2007), the Commission sent additional documents to which access could be granted, which related to the file labelled 135 and question 9 of […] Article 18 responses. Moreover, the Commission sent by CD-ROM certain documents which had subsequently been revised by Pilkington as well as certain other documents labelled EFL3, SJ2, CC2, and CC3.

(53) The parties having made known in writing their views on the Statement of Objections, all the addressees of this Decision attended the oral hearing, which was held on 24 September 2007. Following the hearing, Pilkington and Soliver sent further submissions to the Hearing Officer both dated 15 October 2007. The Hearing Officer responded by letters to the companies on 22 October 2007 (Pilkington) and on 26 October 2007 (Soliver). The Hearing Officer also forwarded Pilkington's submission to Glaverbel for its comments, if any, on 22 October 2007. Glaverbel chose not to provide any

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63 See p. 48026.

64 See Glaverbel's response, p. 47562 and Asahi's response, p. 48106.

65 See p. 45523.

66 See p. 45534. AGC: Article 18 requests for information sent to AGC on 15 and 26 January 2007, p. 48204 and p. 49098, responses dated 19 January 2007, p. 48455 and p. 49105 and 2 February 2007, p. 49255, e-mail to Freshfields Bruckhaus Deringer (Glaverbel) sent on 22 February 2007, p. 49770, response by AGC (Glaverbel) dated 27 February 2007, p. 49771, e-mail to Cleary Gottlieb Steen Hamilton (Asahi) sent on 23 February 2007, p. 49776, response by Asahi dated 27 February 2007, p. 49775; Pilkington: Article 18 request for information sent to Pilkington on 15 January 2007, p. 48196, response by Pilkington dated 19 January 2007, p. 48264; Saint-Gobain: Article 18 requests for information sent to St Gobain on 26 and 31 January 2007, p. 48443, response dated 2 February 2007, p. 49225.

comments. Asahi submitted further observations on its own initiative on 22 November 2007, 20 December 2007, 6 February 2008 and 6 March 2008. Pilkington submitted further observations on its own initiative by letter dated 7 January 2008.

(54) On 21 November 2007 the Commission sent an additional document to Saint-Gobain for comments as it had subsequently been added to the Commission's file. Saint-Gobain provided its comments on this document on 26 November 2007.

(55) The essential elements of the parties' observations to the Statement of Objections are dealt with in the corresponding sections of this Decision as well as in section 4.5 of this Decision.

3.2. The leniency application

(56) Following the first inspections carried out as referred to in recital (39), on 24 February 2005 and on 9 March 2005 respectively, Glaverbel and Asahi Glass Co. Ltd, and their subsidiaries, (hereafter collectively referred to as the "leniency applicant"), submitted an application for immunity or alternatively reduction of fines under the Commission notice on immunity from fines and reduction of fines in cartel cases[67] (hereafter the "Leniency Notice"), […].

(57) […].[68]

(58) On 19 July 2006, the Commission rejected conditional immunity from fines for the application made on 24 February 2005 in relation to OEM on the basis that the application did not meet the conditions set out in point 8(a) or 8(b) of the Leniency Notice.

(59) On 20 July 2006, the leniency applicant was notified of the rejection of conditional immunity from fines at the Commission's premises.[69] Pursuant to point 26 of the Leniency Notice, the applicant was informed that the Commission intended to apply a reduction of 30 to 50% of the fine which would otherwise have been imposed.

4. DESCRIPTION OF THE EVENTS

4.1. Background

4.1.1. The procurement of carglass by car manufacturers

4.1.1.1. Bidding process - Requests for quotation

(60) The procurement by car manufacturers of glass parts for a specific car model is carried out through a bidding process. The car manufacturers

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67 OJ C 45, 19.2.2002, p.3. When referring to 'leniency' in this Decision, this term includes both immunity from and reduction of fines.

68 […].

69 See p. 11645.

invite carglass suppliers to quote for the development, production and supply of glass parts for a new model or a new body type of an existing model. As a first step it is customary for the car manufacturer to send out a request for quotation (hereafter "RFQ") to the carglass suppliers. An RFQ includes drawings, design and technical feasibility specifications, the target prices on a per glass piece basis which the car manufacturer expects to be met as well as estimates of the volume to be produced over the life time of the new vehicle. It also contains other information on the basis of which the glass manufacturer has to make an offer such as the car manufacturer's general terms and conditions as well as requirements in terms of production and logistics flow. Acceptance of these terms and conditions is a pre-condition to the carglass supplier's participation in the RFQ process. The RFQ often includes a table asking for a detailed cost breakdown of the price (in French it reads "*décomposition de prix*") quoted for each of the glass parts under tender, including development and tooling costs and also a detailed breakdown of the productivity gains. The detailed cost break-downs which are used by the car manufacturers to justify the price quote more particularly consists of not only the price quote but also all the cost elements in relation to pre-assembly with other components (e.g. antenna, sensors), encapsulation or extrusion, transportation and packaging.[70] Price supplements for dark tinted glass requested by the car manufacturer such as Venus, Sundym or Athergreen are also set out in the RFQ.[71] The productivity gains are expected to be passed on to the car manufacturer as yearly discounts. The RFQ can be seen as a questionnaire which will show whether the glass producer has the capacity and technology available to submit an offer for the glass piece in question.

(61) The offer documents are normally sent to car manufacturers two to four weeks after the RFQ has been issued.[72] They include the price for the development, the tooling costs for the first prototype, the price for prototype pieces, the price per piece during series production as well as productivity gains. The discounts offered on the basis of productivity gains are also referred to as lifetime or "long-life" conditions.[73] The costs of the first prototype can also be included in the series price. In the event that all these costs have to be borne by the glassmaker, who also takes full liability for the development of the glazing, the industry speaks of "Full service supply (FSS)".[74] Subsequent negotiations can last between a couple of weeks and 12 months. If the car manufacturer agrees with the proposal submitted by a certain carglass producer, the car manufacturer informs

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70 See answer to questions 16-20 of the first questionnaire by Saint-Gobain of 26 January 2006, p. 18662-18670 and 18687-18856.

71 See for instance answer to questions 16-20 of the first questionnaire by Saint-Gobain of 24 February 2006, annex 3, p. 18756.

72 See answer to question 16 of the first questionnaire by Pilkington of 24 February 2006, p. 15577 and answer to questions 16-20 of the first questionnaire by Saint-Gobain of 24 February 2006, p. 18662-18670.

73 Answer to question 55 of the second questionnaire by Saint-Gobain of 16 June 2006, p. 45577-45578.

74 Answer to question 49 of the second Article 18 request for information sent on 8 May 2006 by Saint-Gobain, see Article 18 response of 16 June 2006, p. 45574.

such a producer that it has been retained as the supplier for the part in question by sending a nomination letter.[75]

(62) There are three nomination possibilities. The simplest way would be to nominate just one carglass supplier for the entire set of glass for the model in question. This is referred to as single sourcing. Alternatively, the car manufacturer splits the car set between two or more glass suppliers by allocating for instance the windscreen to one supplier, the backlight to a second supplier and the sidelights to yet another one. Lastly, it also happens that, in particular for volume car models, the car manufacturer selects two or more suppliers for the same piece referred to as dual or multiple sourcing. In all scenarios the car manufacturer does not commit itself to purchase a certain number of glass pieces but rather to a percentage figure of actual production of the model, that is to say, a contract for 60% of the glazing needs. The choice of single, dual or multi sourcing strategy is based on physical and financial reasons. Firstly, in order to ensure a continuous production and logistics flows, some car manufacturers find it useful to appoint a second supplier, for instance in case there is a shortage of supply (for example because of strike or accident) at the plant of the first supplier. The affected supplier will then inform the car manufacturer of such delays or shortages in the delivery of parts. The car manufacturer will then require the second supplier to increase its output and deliveries in order to step in and avoid any disruption at the assembly lines of the car maker (no contract is entered into between the first supplier and the car manufacturer for the deliveries that the second supplier makes at the request of the first supplier). Secondly, some car manufacturers will work with several suppliers (the case of French car manufacturers) to benefit from the competitive process and to obtain the lowest possible prices.[76]

(63) The decision for a car manufacturer on whether the basis in the RFQ and in the end for the nomination is individual parts, carsets or subsets depends on their respective component strategies. It can be generally said that it is done on a case-by-case basis whilst taking into account factors such as pricing aspects and technical as well as quality requirements.

(64) Decisive elements for a choice of a supplier are for instance the lowest total of the series price, tooling costs, development costs, prototype costs, packaging charges and cost for quality management and logistics, all parameters calculated over life-time (from start of development to end of series production), as well as compliance with the procurement strategy of the car manufacturer and the technical and quality requirements.[77] Other factors that determine the sourcing decision are whether the target price is met and the lowest lifetime amounts for piece, tooling, and development costs to be spent.[78] It can generally be concluded that the choice is based on the overall economic assessment through a comparison of the part price,

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75 See example of RFQ provided by Saint-Gobain, annex of its Article 18 response of 24 February 2006, p. 18687-18822.

76 Answer of 24 February 2006 to questions 16-20 of the first questionnaire by Saint-Gobain, p. 18662-18670.

77 See […] Article 18 response of […], answer to question 19, p. […].

78 See […] Article 18 response of 8 March 2006, answer to question 19, p. 16566.

tooling costs and net present value taking into account the productivity proposals from the suppliers. According to Saint-Gobain, the main elements of the offer are price quotes, development costs, savings/discounts on current business, productivity discounts and technical specifications.[79]

(65) After the selection phase ending with the nomination letter the development phase begins. Development can take between 10 months and three years,[80] depending on the complexity of the glazing part. During this phase the initial design and specifications are often modified. Since each glass part is produced on dedicated tools and equipment, specific tools will have to be constructed for a new glass part. The development phase includes the production of prototypes and initial samples.

(66) Once the development phase is completed the mass production and supply phase begins. The volume ordered by the car manufacturer usually includes a certain percentage which is not meant for first assembly of the cars but for replacement. The average duration of a supply agreement depends on the car manufacturer in question.[81] In some instances the car manufacturer opts for a lifetime contract for the whole life cycle of the car. These contracts have typically a supply period of 5 to 7 years or longer, while there are also yearly contracts which allow the car manufacturer to renegotiate every year and change supplier if better conditions are offered.[82] For example, […] usually engages in contracts for the entire life cycle of the vehicle.[83]

4.1.1.2. Car manufacturers' sourcing strategy during production

(67) During the production of a vehicle it is not uncommon that the volume supplied by the nominated glass manufacturer(s) changes to take account of the actual evolution of the sales of the car model concerned or that a new supplier is selected by the car manufacturer either as a second supplier or in replacement of the initial one. In cases of multiple sourcing the car manufacturer may gradually increase the volume purchased from the second supplier of a certain glass piece at the expense of the first supplier, in particular if quality requirements or requested price reductions are not met.[84] Know-how and patents are generally not seen as an obstacle to the

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79 See answer of 24 February 2006 to questions 16-20 of the first questionnaire by Saint-Gobain, p. 18662-18670.

80 See answer of 24 February 2006 to question 18 of the first questionnaire by Pilkington, p. 15579, and answer to questions 16-20 of the first questionnaire by Saint-Gobain, p. 18662-18670.

81 See Article 18 responses from car manufacturers, responses to question 21. See […].

82 […] has a clause in its general terms and conditions which allows […] to switch supplier if it gets a better offer and the incumbent seller is not able to match that offer within 30 days. See reply by Saint-Gobain to questions 16-20 of the first questionnaire of 26 January 2006, p. 18662-18670.

83 Answer of 3 March 2006 by […] to the Commission questionnaire, question 21, p. 16356.

84 Answer by Saint-Gobain of 24 February 2006 to questions 16-20 of the first questionnaire of 26 January 2006, p. 18662-18670.

selection of a second supplier.[85] It is possible for any experienced glass producer to reproduce any existing glass piece.[86]

(68) In the quotation documents there is usually also an item "After sales price", which is then taken up in the nomination letter.[87] Over the life cycle of a car model an additional 5-10% volume of the total OE order is earmarked for replacement.[88] The price for those pieces which are not for first assembly but for replacement is normally the same as for first assembly, with the exception of a supplement for the individual packaging and the ensuing different logistics.[89] Car manufacturers have developed order systems for replacement glass which are based on the number of cars on the roads and a percentage based on past experience of damages to the glass which allows them to order the right quantity on a regular basis.[90] Towards the end of the production of a vehicle the car manufacturer aims at having a sufficient stock of replacement glass for, in the case of […], at least 15 years.[91]

4.1.2. Licensing, cross supply agreements and other commercial relationships between carglass suppliers

(69) There are a number of commercial relationships between the suppliers of carglass. These relationships concern licensing as well as cross-supply agreements between the major suppliers of carglass. For instance, Saint-Gobain has out-licensed some of its technologies to competitors in essentially three domains: acoustic glazing for noise reduction, extrusion technology to glue the glass directly onto the car and double bending for complex glass shapes.[92]

(70) Pilkington and Saint-Gobain are joint venture partners for the production of flat glass to be processed into carglass in Italy (Flovetro); another joint venture for the production of flat glass for use in carglass plants exists between Pilkington and Glaverbel in Spain (GlaPilk).[93]

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85 Answer to question 20 of the first questionnaire by […] of 15 February 2006, p. 13674; by Pilkington of 24 February 2006, p. 15580; answer of […] of 3 March 2006, p. 16024, Annex 7b to questionnaire, page 3: […].

86 Answer by Saint-Gobain of 24 February 2006 to the first questionnaire of 26 January 2006, p. 20, questions 16 to 20 (see section B.3.2 on page 20 entitled "Practical implications of a second source of supply"), p. 18662-18670.

87 Answer of […] of 3 March 2006, Annex 7b to questionnaire, page 2, p. 16024.

88 Answer of AGC of 19 May 2006 to question 9 of the second Article 18 letter sent on 7 April 2006, p. 26099-26100.

89 See for example the offer of Saint-Gobain for the SAAB 640/641 of 2004, Annex three of Saint-Gobain's Article 18 response of 24 February 2006 to the first Article 18 letter of 26 January 2006, p. 18687 and p. 18822.

90 Answer by […] of 3 March 2006 to question 4 of the Article 18 letter of 7 February 2006, p. 16000-16002 and answer by […] of 24 February 2006 to question 4 of the Article 18 letter of 7 February 2006, p. 13923-13924.

91 Answer by […] of 3 March 2006 to question 6 of Article 18 letter of 7 February 2006, p.16002.

92 Answer by Saint-Gobain of 24 Febrary 2006 to question 2 of the first Article 18 letter of 26 January 2006, p. 18650-18653.

93 Answer by Pilkington of 24 February 2006 to question 2 of the first Article 18 letter, p. 15568.

(71) Apart from these joint ventures there are also cross supplies between the competitors for specific raw glasses, in particular dark tinted glass, and often on a reciprocal basis. For instance, Saint-Gobain has supplied the other major glassmakers with its dark tinted glass 'Venus', while Pilkington has supplied the others with its own dark tinted glass 'Sundym'. According to the glassmakers these cross supplies have often been necessary to meet the specifications requested by the car manufacturer.[94] Another reason for these swap arrangements is to enable the glass manufacturer to dedicate a float glass line to either clear or tinted glass and thus avoid the losses due to the transition time from tint to clear.[95]

(72) On occasion, where the production volumes required for a certain glass part is too low to be commercially attractive, glass manufacturers subcontract the production to other glass suppliers.[96]

(73) Spot commercial relationships also exist as another regularly occurring supply relationship whereby certain carglass parts are sold to competitors on a spot basis. These spot deliveries are agreed among competitors in times of shortages where there is a production problem or a strike. Such arrangements are often referred to as "dépannage".[97]

4.1.3. Market share estimates by the market players subject to the proceeding

4.1.3.1. Sources of data on output and sales of vehicles in the EEA used by carglass suppliers

(74) Due to almost perfect transparency as to the actual sales of motor vehicles by each individual car manufacturer, the carglass suppliers are able to calculate their respective market shares within the EEA in a very accurate manner. The carglass suppliers obtain this data from national automotive federations[98], international automotive news services[99], automotive forecasters (for detailed market and production research)[100] and other sources such as motor shows, daily press, automotive reviews and photographic data bases (for example Autovision). Detailed information is obtained on a subscription basis, being purchased from specialised information services. The industry databases (such as J.D. Power) primarily purchased by carglass suppliers provide vehicle production volumes, broken down by model, body type and assembly plant level, and cover both

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94 Answers by Saint-Gobain of 24 February 2006, p. 18650 and by Pilkington of 24 February 2006, p. 15568, to question 2 of the Article 18 request for information of 26 January 2006.

95 Answer by Pilkington of 30 May 2006 to question 3 of the Article 18 request for information of 7 April 2006, p. 40270.

96 Answer by AGC to question 2 of the Article 18 request for information of 26 January 2006, p. 13686 […].

97 See […].

98 FFOE (Austria); FEBIAC (Belgium); AIA CR (Czech Republic); AUTOTUOJAT ry (Finland); CCFA (France); VDA, KBA (Germany); ANFIA and UNRAE (Italy); ZM SOIS (Poland); ACAP (Portugal); AIA SR (Slovak Republic); ANFAC (Spain); BIL (Sweden); RAI (The Netherlands); SMMT (United Kingdom); ACEA Belgium (at the EU level).

99 Auto Industry World – Vehicle News; AutoAsia; Automotive News; Just-Auto; Samar (Poland); WardsAuto.

100 Business Monitor International; Ernst&Young; Global insight; J.D. Power – LMC reports; CMS R.L Polk Marketing systems; Autofacts (now PriceWaterhouseCoopers); Marketing systems (based in Germany); ITB.

production history and forecast data. These data are regularly checked against other forecasts which the suppliers obtain from other database sources (such as CMS).[101]

(75) The suppliers moreover receive data from the car manufacturers as follows: statistics on the car manufacturers' glass-part-demand requirements forecast three months ahead[102]; statistics on each car manufacturer's output on a model-by-model basis provided on a monthly basis for the previous month[103]; medium term demand forecast (around 12 months ahead) showing vehicle build numbers or specific demand forecasts; long term forecasts which include an estimated production for a period of two or three years[104]; and information as to future demand via RFQs[105] and informal dialogue with the car manufacturers in the context of on-going commercial and technical contacts with the car manufacturers in relation to existing and future supply contracts. These sources are generally used by market players to estimate market share to take account of models for which one or another supplier is not supplying glass. In addition, the competitor situation is very transparent because there are few players on the market.[106]

4.1.3.2. Methods used by carglass suppliers to track market shares

(76) Several documents copied by the Commission at the premises of AGC, Saint-Gobain and Pilkington relate to market share data gathered by the companies' marketing departments and by the key account managers in charge of a particular customer/car account. The information in question is provided by car manufacturers in the context of commercial contacts or on the occasion of physical deliveries of glass parts to the assembly line of the car manufacturer or from publicly available sources such as JD Power (see section 4.1.3.1). In order to track their respective market shares in the industry, the suppliers use two alternative ways, by reference either to the value of sales (in euros) or to the volume (by "carsets", parts of carsets, square metres or glass pieces). The suppliers have described in the Article 18 responses how they each measured market share estimates for the period in question.

(77) Until 2004, Saint-Gobain used […][107].[108]

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101 For JD Power or LMC and CMS see Article 18 responses by Saint-Gobain of 16 June 2006, p. 45551 (file 90), Pilkington 30 May 2006, p. 40266 (file 80) and AGC of 19 May 2006, p. 26087 (file 69), to question 2 of Article 18 letter sent to Saint-Gobain on 8 May 2006, to Pilkington on 7 April 2006 and to AGC on 7 April 2006. See also file 68 for example of LMC report […].

102 See AGC Automotive's Article 18 response of 19 May 2006, p. 2, p. 26087, see Pilkington's Article 18 response of 30 May 2006, p.2, p. 40266 (see files 143 to 151 for non-confidential version), see Saint-Gobain's Article 18 response of 16 June 2006, p. 3, p. 45551 (see file 163 for non-confidential version).

103 See Saint-Gobain's Article 18 response of 16 June 2006, p. 3, p. 45551.

104 See AGC's Article 18 response of 19 May 2006, p. 2, p. 26087.

105 For example, a RFQ contains information for the suppliers regarding annual production volume foreseen which indicates to suppliers the pieces needed etc.

106 See document labelled GK5, p. 2544, see p. 36572 et seq.

107 See document labelled AK18, bearing a 1999-2004 overview of "production automobile - Total Europe", p. 2389.

108 See Saint-Gobain's Article 18 response of 16 June 2006, p. 3, p. 45551.

(78) AGC tracks market shares by reference to the value of sales and by volume using parts of carsets as the counting measure. Regarding the value approach, a carset is generally considered to comprise one windscreen, one backlight and six sidelights. The number of the sidelights used varies according to the model, for example 3-door, 5-door and also evolves over time, as models evolve. In order to compile data AGC first uses the JD Power or CSM (from 2003 onwards) reports on car production volumes in order to determine the number of cars produced on a model-by-model basis. AGC counts one carset per car model. The number of glass pieces used in that model and the identity of the supplier would be checked by visiting motor shows, for contracts under supply, as the name of the supplier is always marked on the glass piece. AGC then uses their own average market price per family of parts (per carset, that is the windscreen, sidelights and backlights) per car manufacturer to calculate turnover. As regards AGC's estimates by reference to volume (by glass piece), the number of pieces for cars under production is known. Total volumes can therefore be calculated by multiplying the total number of cars produced (from LMC/CSM) by the number of pieces per car model. For future vehicles, AGC would generally assume that they would have the same number of pieces as the old model and that contracts would be supplied in the same way.[109]

(79) Pilkington measures market shares by reference to revenue or value, which entails an estimation of the size of the total market in value (euros) by using as a benchmark its own prices for each glass part that it supplies to car manufacturers.[110] However, documents in the Commission's file show that, in addition to value and contrary to what is stated in Pilkington's Article 18 response, it also calculated market shares by reference to volume (by carset and by glass piece).[111] In this respect, it is furthermore noted that Pilkington used JD Power reports to collect the relevant data, despite its statement to the contrary in its Article 18 response.[112]

(80) Soliver has not provided any detailed information on how it estimates market shares. It only stated that information is generally received through contacts with car manufacturers.[113]

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109 See AGC's Article 18 response of 17 February 2006, answer to question 14, p. 11, p. 13695, document KE51, p. 957-981, see explanation of this document in AGC's Article 18 response of 19 May 2006, answer to question 42, p. 13 and 14, p. 21121. See documents PJ5, p. 1591, CC17, p. 1528. For these documents, see explanation provided in the Article 18 response of 19 May 2006, answer to question 76, p. 31 and to question 69, p. 28, p. 26135.

110 See Pilkington's Article 18 response of 24 February 2006, answer to question 14, p. 15573.

111 See document labelled SM3 for 2001 (by carset), p. 6682-6686, see document labelled JC25 for 2003-2004 (by 1000s of pieces), p. 7295-7353, see document labelled NW2 for 1999-2005 (volume and turnover), p. 7718-7835.

112 See Pilkington's response of 30 May 2006 to Commission's Article 18 request for information dated 7 April 2006, answer to question 2, p. 1, p. 40266. Pilkington states that for 1995 to 2005 it did not use JD Power but see document labelled SM4 dated July 2001 referring to JD Power (budget, forecast, account plans), p. 6687-6689 and NW2 from 07/2002 JD Power LMC containing information for 1999 to 2005 on Global VM market shares Competitive shares-carsets-pieces-sqm-Turnover Closed bids 2001/2005 customer strategy per brand etc, p. 7718-7735.

113 See Soliver's Article 18 response of 23 June 2006, answer to question 2, p. 1, p. 34547.

(81) In sum, referring to volume, it can be concluded that market share data is tracked as follows for cars in production: the number of parts will be deduced by multiplying the number of cars produced by the number of parts per year (information obtained from customers and from publicly available sources) and, for future car models; the RFQ predicts the yearly production/number of parts per car for cars not yet in production. The conversion of data from glass pieces into square metres is feasible and the contrary is also possible albeit less precise. Theoretically, a conversion from the square metres into glass pieces and value can be done by relying on the average surface of a glass piece and by assigning an average value by square metre.[114] Referring to value, own prices are used as a benchmark in order to estimate the size of the total market value.

(82) The three major competitors have in their Article 18 responses provided an explanation of how they generally measure market shares of competing suppliers for existing and future models.

(83) During the period of the infringement Saint-Gobain […].[115]

(84) AGC measures the turnover of the other suppliers on the basis of the average price per carset. The average selling price of AGC is extrapolated and used as the basis for calculation of the turnover for other competitors.[116] A document from the premises of Glaverbel, dated 8 July 1996, illustrates how AGC at the time calculated market shares for competitors by reference to number of pieces produced for a production line.[117]

(85) Using its own supply value as the starting point, Pilkington gathers details of supply by other suppliers through its […] who know who has been awarded that business which Pilkington has not won.[118] This information is, according to Pilkington, based on discussions the […] have with the purchasing or engineering departments at the vehicle manufacturers.[119] In addition, Pilkington uses public or third party data sources.[120]

(86) Tracking on the basis of information provided by car manufacturers or other public or third party data sources apart, the Commission has evidence which illustrates that the three competitors exchanged information about their respective market shares amongst themselves and compared their respective estimates in connection with the on-going coordination for the

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114 See AGC's Article 18 response of 17 February 2006, page 11, p. 13695 and Saint-Gobain's Article 18 response of 16 June 2006, p. 12, p. 45560.

115 See Saint-Gobain's Article 18 response of 16 June 2006, p. 3 (reply to question 2), p. 45551 and p. 12 (reply to question 24), p.45560. See document dated 24/4/2003, from CD-rom, file 21, for an example of how Saint-Gobain gets information on its competitors from a customer, p. 5895, see finally p. 40131.

116 See document labelled PJ5, p. 1591, explanation provided in the Article 18 response of 19 May 2006, answer to question 76, p. 31, p. 20571 and p. 26138.

117 See document labelled SD24, p. 4276-4300 (file 16).

118 See Pilkington's Article 18 response of 30 May 2006, p. 34, reply to question 49, p. 40299.

119 See Pilkington's Article 18 response of 30 May 2006, p. 34, reply to question 49. p. 40299.

120 See Pilkington's Article 18 response of 30 May 2006, p. 34, reply to question 49, p. 40299.

purposes of allocating of carglass supplies, as will be shown in sections 4.3 and 4.4.[121]

4.2. Organisation of the cartel

4.2.1. Trilateral, bilateral meetings and other contacts

(87) Pilkington, Saint-Gobain and AGC participated in trilateral meetings which were referred to as "club" meetings.[122] These three competitors are sometimes referred to in certain documents in the Commission's file as the "Big three",[123] a term that will also be used in the following sections of this Decision. The […] normally attended such meetings often accompanied by the […] being used by the participants in the meetings. These meetings were […] organised by telephone and were mostly initiated by Saint-Gobain. These so called "club" meetings had no chairman or secretary and the organisation was a rolling process between the three competitors, Saint-Gobain, Pilkington and AGC.[124]

(88) The competitors also met bilaterally to discuss ongoing as well as new models to be launched. These bilateral meetings and contacts between Saint-Gobain/Pilkington, AGC/Saint-Gobain and AGC/Pilkington related to issues similar to those discussed during the trilateral meetings, in particular the evaluation and monitoring of market shares, the allocation of carglass supplies to car manufacturers, the exchange of price information as well as other commercially sensitive information and the coordination of their respective pricing and supply strategies. In addition, numerous telephone contacts occurred between the competitors.

(89) Although Soliver was not party to the arrangements prior to November 2001, […].[125] The Big three could exploit the fact that Soliver lacked in-house production of the raw material, flat glass, which made it dependent on the three leading suppliers. Saint-Gobain, as Soliver's most important supplier, had a privileged communication channel and was in the end successful in persuading Soliver to adhere to the Big three's common plan.[126] According to […] documents in the file, Mr […] and Mr […] of Saint-Gobain regularly met and/or had contacts with Messrs […] of Soliver.[127] Soliver supplied products mainly to Fiat and VW. Mr […] and Mr […] of Saint-Gobain were in charge of those […] customers and the purpose of the contacts was mainly to share the supply of carglass parts for the Fiat and VW accounts. Soliver started to participate directly in the

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121 See exemples of comparison of market shares in sections 4.3.2, recital (114) and 4.4, recitals (321), (324)-(326) and (373) .

122 See […]. See document labelled LTe11, p. 5461-5462. The reference to the "club" can be seen in the document labelled LTe11 in file 14. Contrary to what Saint-Gobain states in its Article 18 response of 16 June 2006, answer to question 81, p. 38, this reference does not relate to car manufacturers, but rather, […], to carglass suppliers.

123 See for instance document labelled CC4, p. 1490-1492 largely quoted in para (114).

124 […].

125 See documents labelled […] regarding […].

126 See table 1 in section 4.2.5, e.g. November-December 2001: document labelled DV15, (exchanges with AGC), p. 622-627; May 2002: document PDR11 (exchanges Saint-Gobain), p. 460.

127 […].

unlawful activities as of 19 November 2001 (contacts with AGC). Soliver met bilaterally with Saint-Gobain and AGC until 11 March 2003.[128]

4.2.2. Location of meetings

(90) The Big three met for trilateral meetings in hotels in various cities (for example, the Brussels Airport Arabella Sheraton hotel, in Niederhausen, near Frankfurt, in Paris at the Regency Hotel, the Charles de Gaulle Airport Hyatt or Sheraton hotels) and once at the Arabella Hotel in Düsseldorf, Germany. The competitors moreover met at the premises of GEPVP, where they sometimes organised meetings on the fringe of the official GEPVP meetings, over lunch. They also met at the Rome Fiumicino Airport hotel and at the premises of the glass association in Rome, the Assovetro. Finally, the competitors met in Paris at the premises of the FIV, the Fédération du verre, and in the apartment of Mr […] of Pilkington in the 16th district in Paris as well as in Mr […] country house in the north of France.[129]

(91) The GEPVP, an independent European trade association in the flat glass industry, was founded in 1978.[130] GEPVP is made up of 14 companies in 11 Member States, all of which are leading glass producers, including Saint-Gobain, Pilkington and AGC. GEPVP was not involved in the arrangements or in the organisation of any meetings which are referred to in this Decision and which took place on the fringe of the official GEPVP meetings. The members of the GEPVP were normally, from Glaverbel, […], from Pilkington, Mr […] and Mr […] and, from Saint-Gobain, Mr […].[131]

4.2.3. Frequency of meetings

(92) […]. In March 1998, there was a meeting at which the contacts between the two competitors went beyond the purely technical as they discussed end prices for a carglass piece. From […] spring 1998 to the second half of 2002 there were regular trilateral Club meetings between AGC, Saint-Gobain and Pilkington every few weeks and sometimes more frequently as well as bilateral meetings and other contacts. From January to March 2003, there were bilateral meetings and/or contacts between Saint-Gobain and AGC, and AGC and Soliver.[132]

4.2.4. Participants

(93) The commercial departments of the suppliers are responsible for handling the RFQs and the subsequent negotiations with the car manufacturers. The

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128 […].

129 See recital (174) for meeting in Mr […]'s apartment in Paris.

130 See response by […] of 27 February 2006, p. 1, p. 14732.

131 See document labelled FMR-F-20, p. 3714 and p. 37544.

132 See overview of meetings and contacts in section 4.2.5. […].

persons concerned within Saint-Gobain, Pilkington and AGC are at […] levels: […].[133] […].

Saint-Gobain

(94) As regards the organisational internal structure of Saint-Gobain, […][134][135][136].

Pilkington

(95) As explained in recital (93), the organisational internal structure of Pilkington has consisted since 1996 of […].[137] From 1999 to 2002 as well as from 2003 onwards the decision making processes changed whilst […].[138]

AGC

(96) […][139][140].[141]

(97) Participants in the meetings and/or contacts were company employees participating on behalf of AGC, Saint-Gobain, Pilkington and Soliver as follows[142]:

– AGC: Messrs […][143].

– Saint-Gobain: Messrs […][144][145][146].[147]

– Pilkington: Messrs […].

– Soliver: Messrs […][148].

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133 This example of internal commercial structure is that of Glaverbel, Saint-Gobain and Pilkington have similar structures (some variations but mainly the same). Glaverbel, see p. 634, 635 and 639, Pilkington, see document labelled MDL10, p. 3019, Saint-Gobain, see Article 18 response of 24 February 2006, p. 23, p. 14205.

134 See Saint-Gobain Glass France's Article 18 response of 24 February 2006, p. 14207 and p. 18673. Mr […].

135 See Saint-Gobain Glass France's Article 18 response of 24 February 2006, p. 14225 and p. 18890.

136 See Saint-Gobain Glass France's Article 18 response of 24 February 2006, p. 14225 and p. 18890.

137 See […].

138 See documents labelled AR2, p. 3450 and p. 43293, see document labelled JC26, p. 7354 et seq and p. 44202 containing […] a list of Pilkington's […], see document labelled BvB1, p. 3494 ([…]) and p. 3476 (organisation chart).

139 See document labelled EF1, p. 639, see also p. 35552.

140 See AGC's Article 18 response of 23 February 2006 to questions 24 and 25, p. 13633 and p. 13685.

141 See AGC's Article 18 response of 17 February 2006, p. 13568-69 and p. 13702.

142 These lists also include employees to which the employees of AGC, Saint-Gobain and Pilkington reported. For a complete description of the participants in the single meetings/contacts, see section 4.4.

143 See document labelled EF1, p. 3019.

144 See document labelled JT22, p. 2217 and p. 36561. See also p. 3649.

145 See document labelled EF/JJJ13, p. 3682 and p. 37196. See also p. 3656.

146 See document labelled JT22, p. 2217 and p. 36561. See also p. 3650.

147 See Saint-Gobain Glass France's Article 18 response of 24 February 2006, p. 14225-14426 and p. 18890-18891.

148 See page 19 of Soliver's response to the Statement of Objections.

4.2.5. Overview of the meetings and contacts from 1998 to 2003

(98) Tables 2 and 3 set out an overview of the meetings and contacts of competitors for which the Commission has evidence of the dates, location and participants. Table 2 contains a list of meetings either trilateral (Saint-Gobain, Pilkington, AGC) or bilateral (Saint-Gobain/Pilkington, Saint-Gobain/AGC, Pilkington/AGC or Soliver/AGC). Table 3 sets out an overview of other contacts (mainly telephone calls, fax transmissions and e-mail correspondence) that occurred between the competitors mostly bilaterally. The participants used either abbreviations or code names when referring to each other at meetings and contacts.[149]

Table 2: Meetings

Date, location	Saint-Gobain	Pilkington	AGC	Soliver
10.3.1998 Charles de Gaulle, Hyatt Regency Hotel, Paris[150]	X	X		
Spring of 1998[151] […]	X	X	X	
29.9.1998[152] Premises of Splintex, Fleurus, Belgium	X	X	X	
9.10.1998 Charles de Gaulle, Hyatt Regency Hotel, Paris[153]	X	X		
Early 1999[154] Brussels Holiday Inn or Novotel Airport Hotel	X	X	X	
20.9.1999[155]	X	X	X	
12.4.2000 Charles de Gaulle Airport Hotel, Paris[156]	X	X	X	
Mid-2000[157]	X	X	X	
Mid-2000[158]	X	X	X	
Prior to 23.6.2000 Location unknown[159]		X	X	
5.7.2000 Location unknown[160]	X	X	X	

149 Abbreviations used by the suppliers to refer to each other during the trilateral and bilateral meetings were as follows: For Saint-Gobain: SGS, SG, StGob, SGV; for Pilkington: P, PB, Pilk, PKT; for AGC: S, SP, Splx or SPX, AGC; for Soliver: SO, S or Sol. They moreover used code names in the form of letters; X referring to Saint-Gobain, Y to Pilkington and Z to AGC. See p. 37 […].

150 See document EFL3, file note dated 10.3.1998, p. 3612-3614 and 24257 et seq.

151 See […].

152 See document labelled 11/1, […].

153 See document EFL3, file note dated 9.10.1998, p. 3540-3542 and p. 24268.

154 See […].

155 See page 11522 […].

156 See documents SM23 and SM24, p. 1289-1311. These notes were taken either on 14/2/2000 or on 12/4/2000. […].

157 […].

158 […].

159 […].

160 […]. The location of the meeting is likely probably to have been either FIV or CDG Airport Sheraton hotel as French vehicle accounts were discussed, see […].

28.7.2000 Paris[161]	X	X	X	
31.7.2000[162] Charles de Gaulle Airport Sheraton Hotel	X	X	X	
July-Sept 2000[163]	X		X	
19.9.2000 Charles de Gaulle Airport Sheraton Hotel[164]	X	X	X	
27.10.2000 Brussels Sheraton Airport Hotel[165]	X	X	X	
Autumn 2000[166]	X	X	X	
Late October/early November 2000 Location unknown[167]	X	X	X	
1.11.2000[168] Charles de Gaulle Airport Sheraton Hotel, Paris	X	X	X	
9.11.2000[169] Charles de Gaulle Airport Sheraton Hotel, Paris	X	X	X	
13-14.12.2000 Airport Sheraton Hotel, Brussels[170]	X	X	X	
26.1.2001 GEPVP, Brussels[171]	X	X	X	
26.4.2001 Sheraton Airport Hotel, Brussels[172]	X	X	X	
20.6.2001 Charles de Gaulle Airport Sheraton Hotel, Paris[173]	X	X	X	
19.7.2001[174]	X	X	X	
7.8.2001[175] Rome Fiumicino Airport	X	X	X	
29.10.2001[176] FIV, Paris	X	X	X	
November 2001[177] Paris	X	X	X	
15.11.2001 Arabella Airport Sheraton Hotel, Düsseldorf[178]	X	X		

161 […].
162 […].
163 […].
164 […].
165 […].
166 […].
167 […].
168 […].
169 […].
170 […].
171 See […] Article 18 response for the list of participants, see files 49 and 50, p. 14851. […].
172 See p. 36, see document KD15 (travel expenses for Mr […]), p. 4415-4417, see Article 18 response by […] to question 61, p. 45580.
173 […].
174 […].
175 See p. 36 of the file. See document labelled KS16, p.4418-4420 and […] answer to question 62 about the document KS16 of 16 June 2006, p. 45580.
176 […].
177 […].
178 See handwritten minutes of 15.11.2001, p. 36 and p. 24-27.

29.11.2001 Assovetro, Rome and Rome Fiumicino Airport Hilton Hotel[179]	X	X	X	
4.12.2001[180]			X	X
6.12.2001[181]	X	X	X	
End of year 2001[182] Charles de Gaulle, Sheraton Airport or in Rome, Assovetro	X	X	X	
5.2.2002 Rome[183]	X	X	X	
30.4.2002 Charles de Gaulle Airport Sheraton Hotel, Paris[184]	X	X	X	
Around April/May 2002[185]	X		X	
3.9.2002 Assovetro, Rome[186]	X	X	X	

Table 3: Other contacts

Date	Saint-Gobain	Pilkington	AGC	Soliver
18.5.1998[187]	X	X	X	
28.5.1998[188]	X		X	
5.6.1998[189]	X		X	
17.6.1998[190]	X		X	
23.6.1998[191]	X		X	
16.9.1998[192]	X		X	
18.12.1998[193]	X		X	
15.1.1999[194] (notes referring to contacts held in Sept-Dec 1998)	X	X	X	
12.2.1999[195]	X		X	
9.3.1999[196]		X	X	

179 […].
180 See document labelled DV15, p.2 and 5, p. 623, p. 626.
181 See […] Article 18 response, p. 14864, see also document EF7, p. 663-665 […].
182 […].
183 […].
184 […].
185 […].
186 […].
187 […].
188 […].
189 […].
190 […].
191 […].
192 […].
193 […].
194 See file 5, document labelled SM44, p. 1422-1423.
195 […].

22.4.1999[197]	X		X	
16.6.1999[198]	X		X	
15.7.1999[199]	X	X		
20.9.1999[200]	X		X	
30.9.1999[201]	X		X	
26.10.1999[202]	X		X	
2.11.1999[203]	X		X	
11.11.1999[204]	X		X	
13.01.2000[205]	X		X	
Prior to 23.6.2000[206]		X	X	
23.6.2000[207]		X	X	
Mid-2000[208]		X	X	
23.6.2000 and 17.7.2000[209]		X	X	
21.7.2000[210]	X		X	
Late August/early September 2000[211]	X		X	
Late September 2000[212]	X		X	
11-25.10.2000[213]	X		X	
Between 31 October and 8 November 2000[214]	X		X	
5.11.2000[215]		X	X	

196 […].
197 […].
198 […].
199 See document from informant, page 8 of English translation (annex to letter dated 7 October 2003), p. 41-42.
200 […].
201 […].
202 […].
203 […].
204 […].
205 See document labelled EF13, p. 694, […].
206 […].
207 […].
208 […].
209 […].
210 […].
211 […].
212 […].
213 […].
214 […].

Autumn 2000[216]	X		X	
November 2000[217]		X	X	
End of year 2000[218]	X	X	X	
Prior to and on 18.1.2001[219]	X	X	X	
Prior to or on 14.2.2001[220]	X	X	X	
May 2001[221]		X	X	
Before September 2001[222]	X		X	
10.9.2001[223]		X	X	
6.11.2001[224]		X	X	
19.11.2001-12.12.2001[225]			X	X
Mid-February 2002[226]	X		X	
7.3.2002[227]	X		X	
30.4.2002[228]	X		X	
29.5.2002[229]	X			X
3-18.9.2002[230]	X		X	
Autumn 2002[231]	X		X	
Late September 2002[232]	X		X	
December 2002 to 21.1.2003[233]	X		X	X
Early 2003[234]	X		X	

215 […].
216 […].
217 […].
218 […].
219 […].
220 […].
221 […].
222 […].
223 […].
224 […].
225 See answer of […] to Commission questionnaire of 5 May 2006, p. 34545, see document labelled DV15, p. 622.
226 […].
227 […].
228 […].
229 See document labelled PDR11, p. 48910.
230 […].
231 […].
232 […].
233 […].
234 […].

Around March 2003[235]			X	X
11.3.2003[236]			X	X
Around 2nd half of March 2003[237]	X		X	

4.3. Object and functioning of the cartel

(99) The overall plan of the cartel was to allocate supplies of carglass whilst keeping market shares stable. Therefore, the purpose of the meetings and other contacts mentioned in section 4.2.5 was to allocate new and reallocate existing supply contracts for car models among the four participating carglass manufacturers which accounted for more […] of the European sales of carglass. The documents in the Commission's file, which will be referred to in detail in this section and, more specifically, in section 4.4, show that, in order to allocate these contracts, the glass manufacturers exchanged price and other sensitive information and coordinated their pricing and supply policies, which allowed them to take concerted decisions regarding their response to RFQs issued by car manufacturers and to influence, to a large extent, the choice of the supplier, or in case of multiple sourcing, the suppliers for any given contract or any given carsets or carglass pieces. It was the suppliers' intention to maintain a certain overall stability of their respective market positions for the purposes of the allocation of carglass pieces to be supplied to car manufacturers. The suppliers therefore closely monitored their market shares individually and jointly in relation to the actual supply as well as the future supply for various models not only per vehicle account but also globally (all vehicle accounts together) and, when necessary, correcting measures made sure that on balance the overall supply situation at the EEA level was in line with the envisaged allocation.

4.3.1. Allocation of customers

(100) The Commission has evidence that, from […] March 1998 until March 2003, AGC (as from May 1998), Saint-Gobain and Pilkington (this latter until September 2002) shared customers by allocating the demand from car manufacturers of carglass parts for new cars and existing cars for which production was ongoing as well as for OE replacement.[238] Soliver's participation can be established as from November 2001 until March 2003. During the period concerned, Saint-Gobain, Pilkington and AGC had a joint leading role on the market, which is reflected by the designation "The Club" which can be found in several documents in the Commission's possession. As regards Soliver, it had bilateral contacts with both Saint-Gobain and AGC during the period in question relating to allocation of carglass pieces (see section 4.2.5).

235 […].

236 […].

237 […].

238 See section 4.4 for examples of meetings/contacts concerning allocation of (i) OE glass parts see recital (486) in the Legal Assessment and of (ii) OE replacement glass parts, see recitals (139) Renault 5/6/1998, (140) Renault 17/6/1998, (167) Renault 9/3/1999, and (237) Peugeot 28/7/1999.

(101) In essence, at these meetings and contacts the competitors exchanged information for one or more vehicle accounts or specific carglass pieces and often more than one customer or vehicle account for both existing and future models were discussed. The Commission is able to prove that in at least 15 trilateral meetings, the competitors had discussions covering various accounts, in particular from 2000 to 2002.[239]

(102) As will be explained in detail in section 4.4, when the car manufacturers requested the suppliers to quote, the suppliers regularly co-ordinated their replies to RFQs for contracts coming onto the market and discussed who should win these contracts or which glass parts should be won by whom. Each supplier was interested in securing the supply contracts it wanted most and would compromise over contracts it wanted less. Sometimes certain carglass parts or pieces were better for one supplier based on how much free production capacity it had or on low transport costs for instance.[240] They moreover coordinated their replies when car manufacturers put parts out for re-quotation or when car manufacturers re-negotiated the price for certain parts during the life cycle of a vehicle. The suppliers had basically two means to "preselect" the winner: either by not quoting at all, or by quoting higher prices than the agreed winner. The first mechanism required not participating in a bidding process for a supply contract concerning a car set (all carglass pieces for one model) or specific carglass pieces for a particular vehicle depending on the car manufacturer's requests in the RFQ, for instance by claiming that no capacity was available. The competitors also used this mechanism to attempt to preserve an existing dual or multi sourcing for a given piece. In particular, in order to make sure that the car manufacturer would continue to dual source from the competitors concerned, the competitors agreed to inform the car manufacturer that none of them had sufficient capacity to take on 100% of the order so as to keep stable each competitor's market position (see for instance recitals (188), (189), (244) and (378)).[241]

(103) The second, more sophisticated mechanism used to allocate supply contracts concerning car sets or specific carglass pieces consisted in letting the "pre-selected" winner set a price in response to specific RFQs, with the other competitors agreeing to quote higher prices. In other words, once the winner was agreed, that competitor would inform the others of its proposed

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239 See contacts on 23/6-17/7/00 recitals (226)-(227), 5/7/00 recital (230) seqq., 21/7/00 recitals (234)-(235), 28/7/00 recital (236) seqq., 31/7/00 recitals (243)-(244), late September 2000 recital (255), 27/10/00 recital (258) seqq., 13-14/12/00: recitals (296)-(297), 26/1/01 recital (306) seqq., 20/6/01 recital (321) seqq., 19/7/01 recital (330) seqq., 29/10/01 recital (344) seqq., 30/4/02 recital (391) seqq., 29/5/02 recital (402) seqq. and 3/9/02 recital (408) seqq.

240 See […].

241 See, for other examples, recitals (292) Fiat 9/11/2000 and (345) Peugeot November 2001. See document labelled SSC2, p. 3409-3412, see cd-rom email of 29/9/2004, p. 6076-6077 and p. 39853, see documents labelled GK7, p. 2550, and OM6, p. 6845-6852. […]. Saint-Gobain and AGC used the argument of lack of capacity for the purposes of allocating the supply of the Renault Mégane monospace (the J64). An example for such a lack of capacity game occurred at a trilateral meeting in the end of 2001. According to […] handwritten notes "*Y* [Pilkington] *has always refused to give further capacity to Fiat (not available). Only possibility is with a price increase of about 7-8%."* In other words Pilkington would not supply higher volumes to Fiat on the stated grounds of lack of capacity unless Fiat would make it worthwhile for Pilkington through a price increase. […].

prices either at the same meeting or thereafter, while the other carglass suppliers would agree to make their offers above this price. This mechanism was referred to by the competitors as "covering" each other.[242] When car manufacturers changed their suppliers, the aim of the suppliers was to manage these shifts by realigning supplies through further contract reallocation in order to keep stable their existing market positions.[243]

(104) In order to keep the allocation of contracts as agreed it was also necessary to manage price increases or demands for price decreases which would otherwise lead to a disruption of the envisaged allocation. Carglass manufacturers often have to commit to an annual reduction of the price in line with productivity gains which is an integral part of the offer. Consequently, the main suppliers agreed on productivity related price discounts vis-à-vis certain car manufacturers. One illustrative example is represented by the discussion which took place in 1998 with a view to limiting to […] the additional annual price reduction resulting from productivity gains vis-à-vis Renault, to be applied for the years 1999 and 2000.[244]

(105) It was also not uncommon that car manufacturers tried to obtain additional price reductions during the production phase of a car model either directly or indirectly by shifting costs to the carglass supplier. For instance, car manufacturers requested their suppliers to apply the principle of Full Service Supply (FSS), also referred to as supply integration principle, which meant the transfer of the liability and cost of the development of glass to the glass suppliers.[245] The carglass suppliers attempted to counter-act by coordinating their RFQ responses, such as agreeing on refusing to accept price reductions requested by car manufacturers or by agreeing not to accept additional services requested by car manufacturers without compensation. Lastly, in order not to provoke shifts in supply by the car

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242 See, for examples, recitals (132) GM spring 1998, (139) Renault 5/6/1998, (182) Renault 20/9/1999, (188) Peugeot 30/9/1999, (194) Peugeot 2/11/1999, (211) Renault prior to mid-2000, (223) BMW prior to 23/6/2000, (255) VW late Sept 2000, (265) BMW 5/11/2000, (285) Peugeot Autumn 2000, (303) VW prior to 18/1/2001, (333) Fiat 20/7/2001, (339) BMW before Sept 2001, (346) Fiat 29/10/2001, and (408) Fiat 3/9/2002.

243 An example of how the competitors covered for each other can be seen in the notes of […] as follows: "*PB* [Pilkington] *to cover all but QL + BL if QL not possible due to SPX* [Splintex/AGC] *low price then they will take something else ≈ RD*". […]. In other words Pilkington promised to quote higher prices in order to cover AGC for all parts of the model except the quarterlight and the backlight, thereby ensuring that AGC would win. A further example of how the competitors covered for each other can be seen from the handwritten notes […] as follows: ** T52 LAC verre nu 155 x splx SG couvre, PB … à voir"* [T52 LAC glass 155 x splx SG covers, PB … to see]. This means that for the Peugeot T52, i.e. the 307, Splintex (splx) wanted to win the LAC "verre nu" in other words the heated backlight "laterale arrière chauffante" and Saint-Gobain agreed to cover while no reaction from Pilkington at that time. […].

244 See […]. More examples are provided in section 4.4, see recitals (133) Renault 18/5/1998, (134) Renault 28/5/1998, (171) Renault 16/6/1999, (181) Renault 20/9/1999, (198) Peugeot 17/12/1999, (345) Renault 29/10/2001 and (367) Renault 29/11/2001.

245 See recitals (323) Renault 20/6/2001, (332) GM 19/7/2001. See documents labelled CC4, p. 1500-1513 and GW3, p. 3437-3442. See […]. See also document labelled CC9 referring to an exchange between the three competitors for the "*Renault étude famille*", a request from Renault to provide a breakdown of prices, p. 1500-1513. As for notes taken during meetings and/or contacts with competitors, see […].

manufacturers, the carglass suppliers also agreed on price increases vis-à-vis particular vehicle accounts or specific car sets/carglass pieces.[246]

(106) Furthermore, the three competitors, Saint-Gobain, Pilkington and AGC, coordinated their information disclosure policy to resist demands for price reductions from the car manufacturers. Car manufacturers generally request suppliers to give a full breakdown of their prices for the different components of the windscreens, sidelights and back lights which then form the basis for price reductions. As will be shown in section 4.4, the competitors exchanged information about which pricing elements they would be prepared to reveal to their customers.[247] Similarly, they agreed to limit the disclosure of their production costs and other technical information obtained by car manufacturers through audits of suppliers' facilities which would enable the car manufacturers to put downward pressure on prices.[248] This kind of coordination was done in order to better manage the allocation or reallocation of carglass pieces between themselves.

(107) With regard to Soliver, it had direct contacts with Saint-Gobain[249] and AGC[250] from at least 19 November 2001 to 11 March 2003.

(108) Information at the Commission's disposal shows that […].[251] […]. There is nevertheless one meeting between Pilkington and Saint-Gobain which relates to an exchange of end prices in connection with roof lights and this meeting therefore forms part of the overall arrangements between the three suppliers as described in section 4.4 (see recitals (122) to (125)). In particular, considering that dark tail/privacy glass (which constitutes a sub-category of tinted glass[252]), such as Venus, Sundym and Atherman, forms part of an RFQ and moreover was regularly discussed between the competitors at the trilateral and bilateral meetings and during the contacts, this meeting fits into the general arrangements which are described in more detail in section 4.4.

(109) The Commission furthermore notes that, as the privacy glass range of products of Saint-Gobain (Venus), Pilkington (Sundym) as well as of AGC (Atherman) forms part of the RFQ and constitutes a price supplement to be taken into account by the carglass suppliers when submitting their quotes (see also recital (60)), the three competitors included this factor among the other costs (such as tooling and development costs) when allocating or reallocating supply contracts between each other for the different vehicle

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246 See meeting on 29 October 2001 concerning Fiat at recital (346).

247 See meeting on 20 September 1999 regarding Renault at recital (184).

248 On the fringe of the […] meeting on […], the three suppliers agreed the following: "*AUDITS (...) Reduce the no. of audits by OEMs as they utilize this systematically to collect info about our plants/processes. Train people internally not to discuss details and only official persons can discuss*." […].

249 See document PDR12, p. 461.

250 See document DV15, p. 622-627.

251 For references to the brands of privacy glass of the competitors during the meetings and contacts see **[…]**.

252 See Saint-Gobain Glass France's Article 18 response of 16 June 2006, p. 4.

accounts, in particular during the meetings and contacts that took place in the period 1998 to 2003.

4.3.2. Monitoring with a view to maintaining market shares stable

(110) The three competitors, Saint-Gobain, Pilkington and AGC constantly tracked very closely their respective market shares of the supply to customers. The Commission is aware that market share tracking and the tools used to do it can be perfectly legitimate. However, the three competitors went beyond their own legitimate market share tracking tools described in section 4.1.3.2 by using these tools in order to allocate contracts between themselves[253]. These mechanisms used to allocate supply contracts as set out in section 4.4 were put in place with a view to ensuring a certain overall stability of the parties' market shares or, […], achieving a "market share freeze".[254] Documents in the Commission's possession illustrate that the competitors indeed intended to keep market shares at least stable for the purposes of achieving balance in the allocation arrangements between them (see for instance recitals (177), (189) and (325)). Monitoring and correcting measures were the necessary complements when actual sales volumes and/or actual contract awards diverted from forecasted monitored market shares and/or agreed allocations/reallocations.

(111) On the basis of the documents in the Commission's file it can be concluded that the competitors used both volume (by carset and glass piece) and value on the basis of forecasts produced by the competitors which served as a general basis for the exchanges in order to allocate or reallocate carglass parts during their meetings and contacts.[255] Besides the global forecasts and more long-term overviews, the Big three used the week to week data provided by the […] to analyse the actual evolution of sales regarding individual car models.

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253 See examples of such monitoring for the period 1998 to 2003, see […]; **for Pilkington** documents IH14 2000-2002: market share 2001, p. 2845; ACA8 1999-2005: CD-Rom: market share data 1999-2005 per supplier, p. 3068-3212; JLO2 win/loss market share analysis, p. 3482; HvB18; SM3 2001: Pilk volume (carset) per brand, p 6682-6686; JC1 2002: win/loss Europe, p. 6986-7017; **for Saint-Gobain** documents MBA64 PSA PVB Acoustique "*Rattrapage de part de marché* », p 3832-3837; CD1 1997-2001: parts de marché Europe RSA PSA, p. 5272-5274; LTe03 2001: Nissan Market information + market shares, p. 5396-5400; MT4 page 10/48 2002-2004: market share per competitor, p. 5593, 2003: 14/06/2002: "*Pilk a pris des parts de marché*", p 40165.

254 […]. Section 4.4. contains illustrative examples of how the competitors stabilised their share "*on joue la saturation* [lack of capacity] *pour garder nos parts de marché*"; and "*Y will ask a price increase to avoid change of market share from X →Y→Z*".

255 […]. The counting system which, […] was applied can be described as follows: In order to work out the potential volume, this was done "*individually by adding firstly the number of side lights per model then dividing this by six. Then they would add the number of windscreens per model and the number of backlights per model. The side lights were divided by six because as explained earlier the six sidelights were equivalent to one windscreen or one backlight in the counting system. The sum of these elements was then divided by three as each automotive part, in other words the windscreen, the six sidelights and the backlight was equivalent to one third of a total car set. The total was equivalent to the number of carsets as a result of this calculation*."

(112) Considering that the RFQs contain the number of cars to be produced[256] and taking into account the transparency of the market, the Big three could at their meetings calculate the pieces needed using one of the alternative approaches described in section 4.1.3.2.[257] In practical terms the trilateral and bilateral meetings can be described as being similar to commercial negotiations at which each competitor intended to persuade the other of what it should obtain on the basis of the production volume foreseen in the RFQ. These negotiations should be seen in the light of the respective profitability analyses by the Big three. For any loss-making parts, the three competitors respectively either needed to stop producing these glass parts and switch production to more profitable activities or to increase the price of the carglass parts.[258] There was therefore understandably a certain amount of compromise as to who would get which contract. The competitors therefore needed to apply certain correcting measures in situations where the initial plans of allocation did not work out in the end, including situations where the sales volume for a given car model deviated from the quantities initially forecasted. In particular, correcting measures were put in place to allow the competitors to compensate each other for losses occurred, thus maintaining the agreed market share stability. As can be seen from table 1 in section 2.3.4, the market shares of the competitors indeed remained stable from 1998 to 2003.

(113) In the period from 1998 until 2001, Saint-Gobain, Pilkington and AGC allocated (or intended to allocate) supply contracts without a specifically defined methodology as far as market share analysis was concerned. This gave rise to disputes during the allocation discussions as to who would be awarded what. Generally, the aim when allocating or reallocating glass parts for a particular account (and/or sometimes across accounts) was to leave unchanged the market share balance between the three competitors. As set out in section 4.1.3.2, the competitors measured each other's shares by reference to volume (by reference to car set, car piece, and square metres) or value.[259] Soliver adhered to this overall scheme at least as of 19 November 2001. During a meeting between the three major competitors, on 6 December 2001, the Big three refined what reference(s) they should use together (up to this date either a car set calculation (conversion possible into volume) or a value calculation had been used) and attempted to agree on a common methodology for the purposes of allocation and reallocation of carglass supply contracts – namely they decided on a new rule, since the previous one did not make sense anymore – for the allocation of carglass supply contracts up to 2004. The minutes of that meeting contain a table

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256 See Saint-Gobain's Article 18 response of 24 February 2006, see AGC's Article 18 response of 19 May 2006, see Pilkington's Article 18 response of 30 May 2006. An RFQ contains the annual production volume and the suppliers participating in the bidding process would therefore know the amount of pieces needed.

257 […].

258 See AGC's Article 18 response of 19 May 2006, p. 6 (answer to question 29), p. 26115.

259 As explained in section 4.3.1, the conversion of data from glass pieces into square metres is feasible whereas the contrary is possible albeit less precise. Theoretically, a conversion from the square metre into glass pieces and value can be done by relying on the average surface of a glass piece and by assigning an average value by square metre. Referring to value, own prices are used as a benchmark in order to estimate the size of the total market value.

with forecast market shares of the Big three for 2004.[260] It can also be concluded that the Big three agreed to refine the monitoring in relation to market share calculations as follows according to the minutes of […] as well as those of […], both of AGC: "*3) Actions - to define what the MKT is up to 2004 - Describe clearly what is the reference*

sq/m

- What are we talking about *volume*

which base *car set*

- It has no sense anymore to speak countries real issue is customer - to agree upon to discuss to decide a rule on new model up to 2004 - Do we have to consider share on remaining left part of the cake after new entry - Europe is defined as LMC [JD Power]"[261].

(114) On the fringe of another GEPVP meeting on 10 July 2002 between the Big three, which can be seen as a follow up to the discussions between the Big three on 6 December 2001, a comparison of the market shares by reference to the alternative methods for calculating market shares (car set, square metres and volume) was made. The following overview covered the period 1999 to 2003 in value and volume (by car set and by glass piece):[262]

"*- customer/customer*

- all awarded business

		99	**03**
Pilkington (excl. Russia)	*$*	[30-40]%	[30-40]%
	Carset	[30-40]%	[30-40]%
	m2	[30-40]%	[30-40]%
	Vol	[30-40]%	[30-40]%
SGV	*$*	[30-40]%	[30-40]%
	Carset	[30-40]%	[30-40]%

260 See document labelled EF 7, pages 664 665.

261 See document labelled EF7, p. 663-665, As set out in section 4.4. below, the participants were from […]; from Pilkington Mr […] and from Saint-Gobain Mr […] and Mr […], see participants list of the […] minutes provided by […], annex 12, p. 14864-14867. […]"*- Area all of Europe (...)- How to measure shares parts/carsets/m2 LMC data - What year is the base - Leadership in each customer who - Decide a rule for new models - Scenarios if new comers enter maintaining as best as possible business in Europe Set a target for new model price level"*.

2001 *SPX* *SGV* *PB* *OTH*

SPX […]

SGV […]

PB […]

262 See document labelled CC4, p. 1490-1492.

	Vol	[30-40]%	[40-50]%
	m2	[30-40]%	[40-50]%
AGC	*$*	[20-30]%	[10-20]%
	m2	[20-30]%	[10-20]%
	Carset	[20-30]%	[10-20]%
	Vol	[20-30]%	[10-20]%
Big 3	*$*	[90-100]%	[80-90]%
	Carset	[90-100]%	[90-100]%
	Vol	[90-100]%	[90-100]%
	m2	[90-100]%	[90-100]%

(115) The market situation was monitored by the Big three and compared to what had been forecasted. For example, […], sent an internal email dated on 17 September 2002 to his Account Managers in order to establish the losses suffered by AGC during 2000-2002 and requesting that they inform him of all "business casualties" occurred for that period. The spreadsheet to be filled in by […] and specifies what the competitors "owes" to each other in terms of annual sales turnover.[263] According to the e-mail, the commercial director wanted an overview of the situation between the Big three so as to assess the allocation of accounts between competitors, in other words assess what business had been "*stolen from one player by another player*"[264]. The Commission considers that this document confirms that a number of arrangements between the Big three to allocate contracts was in fact successful and hence implemented.

(116) As a consequence, the Big three also had a compensation mechanism, in order to correct the "casualties", which will be further explained in section 4.3.3.

4.3.3. Correcting measures

(117) The allocation of contracts did not always work out in practice, either because the car manufacturer chose a supplier other than the designated one, or because the sales of a given car model was well below the expected volume or for other reasons such as single dual or multi-sourcing strategies applied by the car manufacturers (see section 4.1.1.1). This is the reason why the suppliers monitored each other and envisaged to compensate for these "business casualties" and "losses". The type of compensation mechanism used by the suppliers in order to try to maintain their respective

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263 See documents labelled JL5, p. 1153-1168, CC1, p. 1479-1481 and KE55, p. 1024-1025 (overlap with each other). See also documents CC2, p. 1482-1485 and CC3, p. 1486-1489 for the overview provided to […] of AGC. For further explanation of these documents, see […]. For further explanation of documents CC2 and CC3 see […].

264 See document labelled CC1, p. 1479-1481. See […].

market shares can be described as follows: In exchange for one party's failure to obtain part of the business of a certain vehicle account, the other parties would suggest a percentage of the business of another account or vice versa. This could be achieved by re-allocating an upcoming RFQ but also by fine-tuning through shifting the supply of existing models (for cars under production). It can moreover be seen from the documents in the Commission's possession that proposed solutions were sometimes made during meetings to adjust for losses in order to try to ensure stability of their respective market shares.[265] The suppliers adapted themselves to the sourcing strategies of the car manufacturers in the following way: In the case of multi-sourcing, the competitors attempted to agree to reduce the volume of supply of carglass parts to a certain customer for an existing model in favour of whichever of the three cartel participants needed to increase their market shares. In the case of single or dual supply, compensation was awarded on the basis of existing cars of the customers (mainly within the same account but sometimes even across accounts, for instance regarding Renault/Peugeot or Renault/Nissan).[266]

(118) The mechanism used by the competitors to fine-tune the market share balance is to claim vis-à-vis car manufacturers to have a technical problem or a shortage of raw material which will lead to a disruption of delivery of the contracted glass part (a so called "dépannage"). The supplier informs the car manufacturer that it will have to stop supply in the near future and suggests an alternative supplier. In the case of dual sourcing, this will almost certainly be the second supplier. Therefore, in cases where the second supplier is the one that needs compensation a shift of volumes can be relatively easily managed.[267]

(119) Examples of such compensations are set out in section 4.4.[268] An illustrative example can be found in the notes taken by […] during a trilateral meeting in July 2000 (see recital (237)). As it transpired out that AGC had taken more volume than agreed on the Peugeot 106 and Citroen Saxo Saint-Gobain [X] and Pilkington [Y] claimed compensation as follows: "*106/Saxo SPX* [Splintex = AGC] *has taken ≈ 100K W/S in 2000; X, Y are worried about this and may need compensation*".[269] A further example is the new Toyota Avensis which was discussed in June 2000 (see

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265 See section 4.4 for the following dates: 17/12/99 compensation in relation to the Peugeot account; 12/02/99 Renault; 28/7/00 Peugeot; 23/6/00-17/7/00 Honda; 15/11/01 BMW; 5/2/02 Renault; April/May 2002 VW; 29/5/02 VW; 2nd half of March 2003 Fiat; See annex 1. See e.g. 2000-2002: Business casualties excel spreadsheet covering the following accounts: BMW, Skoda, Fiat, Nissan, VW, PSA, DCX, Volvo, GM, Renault. The spreadsheets indicate what the competitors owed to each other in terms of annual sales turnover (at p. 13 of document ref. JL5), p. 1165, see also document SM8 in relation to win and loss accounts for Pilkington's business (no explicit reference however to compensation), p. 1479-1481. See […]."

266 See […] and document SM23, p. 1289 et seq. (trilateral meeting on 12 April 2000, see recitals (206) to (208)).

267 See section 4.4. See AGC's Article 18 response of 19 May 2006, p. 21 (answer to question 8), p. 26115. On occasion, the original supplier will check with the second supplier whether it would accept a subcontracting arrangement, whereby the original carglass supplier will subcontract production to a second supplier.

268 See for instance recital (237) for Renault in 2000 and (325) for Fiat in 2001. For a compensation in relation to different accounts, see recital (386) for Renault/Nissan and recital (403) for Opel/Lancia.

269 See […].

recital (226)). It was agreed that "*if new Avensis W/S is no split between SGV* [Saint-Gobain] + *PB* [Pilkington] *then SPX should give up something to SGV*".[270] In other words AGC should compensate Saint-Gobain for not becoming a supplier of the new Avensis. Another example of compensation is illustrated in the handwritten notes of an AGC employee taken some time before September 2001 referring to a conversation between Saint-Gobain and AGC. The two competitors attempted to compensate each other in relation to the BMW account: "*Z to compensate to X ~ 35 K cars*".[271]

4.4. The operation of the cartel

(120) The evidence used by the Commission in this case consists mainly of documents copied by the Commission during the February and March 2005 inspections […] including contemporaneous documentation in the form of handwritten notes and other corroborating evidence such as travel expenses and telephone records.

(121) For ease of reference, the description of the agreements and/or concerted practices which are the subject of this Decision are presented in distinct sections organised in a chronological order (per year from 1998 to 2003).

4.4.1. Start of the infringement - 1998

(122) As will be shown in this section, it can be demonstrated that […] 10 March 1998 multilateral and bilateral contacts occurred between carglass suppliers which had the object of limiting competition on the EEA carglass market. […].[272] […].[273] Towards the end of the 1990s Saint-Gobain and Pilkington intended to harmonise the colour and the light transmission of their respective dark tinted glass brands Venus and Sundym in order to facilitate supply to customers and to create opportunities for swaps.[274] The Commission has collected evidence showing that Saint-Gobain and Pilkington had a series of meetings during **[…]** 1998 at which they exchanged views on general technical issues and business opportunities for a rationalisation of the production range for dark tinted glass by exchanging sometimes commercially sensitive information on costs of dark tinted float production lines, which had a bearing on end prices. The purpose of these meetings was to harmonise their respective tinted glass product ranges in order to satisfy the demands by car manufacturers who wanted to have a minimum of two suppliers of dark tinted glass instead of one. Moreover, due to high production costs and to the fact that car manufacturers often would select one carglass supplier for the glass pieces including dark tinted glass pieces who then had to purchase the dark tinted float glass needed from its competitor's float production line, Saint-Gobain and Pilkington sought to render as similar as possible their respective

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270 See […].
271 See […].
272 See […].
273 See […].
274 See Pilkington's Article 18 response of 30 May 2006, p. 40, answer to question 60, p. 40305, see Saint-Gobain's Article 18 response of 16 June 2006, p. 44 (answer to question 96), p. 45593.

brands Venus and Sundym as regards certain key parameters such as light transmission, colour and thickness. The two competitors therefore held these meetings and contacts so as to organise the necessary swapping of products. The intense exchanges of information allowed the two competitors to get well acquainted with its respective production ranges. One example of these contacts is described by a fax dated 8 December 1998 from Mr […] of Pilkington to Mr […] of Saint-Gobain enclosing a fax from Mr […] to Mr […] of Saint-Gobain. In this fax, an exchange of information regarding production of the privacy glass Venus 35 for Opel Astra T3000 estate between Saint-Gobain and Pilkington is described as follows: "[…]*/it would seem that S.S.G. reaction to this request will be crucial in determining the future of Venus 35 Grau. If you offer it for the encapsulated q'light, & Opel accept, you will be "locked in" to making it for many years, possibly in small volume. Please advise your decision a.s.a.p.*"[275] The fax shows a certain degree of understanding, even though it appears that the discussion seemingly involved quite technical or 'policy' issues. However, it is noted that the fax of 8 December 1998 reads: "*To* […] - *Blind copy for your information – please destroy, do not keep on file*", as well as on the cover page, dated 20 January 1999, on which it is written: "*[...], for your information. Read and destroy. Please do not keep on file!*"[276]. These comments show at least that Pilkington was aware of the fact that the information contained in the fax was particularly sensitive.

(123) Pilkington has tried to explain the content of this fax in its written response to the Statement of Objections[277]. The fax would refer to the glass supply options for the dark tinted variant of the Astra T3000 estate. Pilkington had the contract for all parts except the rear quarter light where the glass piece was supplied by Saint-Gobain. Therefore, Pilkington argues that there was no competition between both companies on this particular model. The only aim of the contact was to propose to Saint-Gobain to use the same glass for all pieces to be delivered to Opel. However, Pilkington could not explain why the fax is annotated with the sentence "*Read and destroy, please do not keep on file!*".

(124) It should be recalled that such initial arrangements were, at least in part, aimed at responding to the car manufacturers' strategy to have the possibility of playing carglass suppliers against each other in order to avoid being dependent on just a single source of supply. The same can be said about carglass pieces other than the dark tail ones where it was equally in the car manufacturers' interest to have more than one car glass supplier so as to leverage between these. While such a coordination concerning pricing strategies may be grounded on efficiency reasons and be therefore legitimate, evidence at the Commission's disposal shows, however, that the coordination at issue went beyond such legitimate objectives.

(125) In particular, at a bilateral meeting held on 10 March 1998 between Pilkington (Mr […]) and Saint-Gobain (Messrs […]) at the Paris Charles de Gaulle Airport Hyatt Regency Hotel, the participants discussed dark

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275 See […], transcript of document labelled EFL3, p. 87, p. 24287.

276 See document EFL3, p. 3514 and 24201.

277 See pages 58-59 of Pilkington's response to the Statement of Objections.

tinted glass for sunroofs. General pricing information regarding target prices for rooflights was exchanged at this meeting. Moreover, the competitors discussed end prices to be submitted to the customers for the Venus/Sundym product range: "*Agreed we should maintain prices for Sundym410/Venus10Grey products at DM17-18 per rooflight* (…)"[278].

(126) For the purposes of this Decision, 10 March 1998 is considered to be the starting date of the collusive contacts, as two out of the four competitors involved in the cartel coordinated prices for a glass piece which forms part of a request for quotation for the procurement and supply of carglass pieces for passenger vehicles as well as light commercial vehicles**.**

(127) […] as from […] 1998 representatives of its subsidiary Splintex SA (now AGC Automotive) became involved in activities with competitors which were unlawful from a competition law point of view. The aim of such activities was to share out contracts for glass parts for different car models and to avoid further price declines.[279] This corroborates the evidence found by the Commission during the inspections carried out in February 2005[280]. In its written response to the Statement of Objections Saint-Gobain stated that it would not contest the material facts as set out in the Statement of Objections. This constitutes in the Commission's view an endorsement of the description and content of the meetings and contacts made by the Commission.

(128) The evidence of contacts between Pilkington and Saint-Gobain such as the one of 10 March 1998 fits into a more general pattern of meetings and other contacts which, in addition to the two competitors, included the active participation of AGC as from May 1998. During these meetings and contacts, Saint-Gobain, Pilkington and AGC exchanged price information as well as commercially sensitive information with a view to allocating carglass supply contracts for the customers […] (for example, for […][281]), […] (in particular the […]) and […].[282] With regard to […], the Big three moreover coordinated their response with regard to productivity gains for 1999 and 2000 to be passed on to the two car manufacturers[283].

(129) In the written response to the Statement of Objections Pilkington argued that during the meeting of 10 March 1998 a discussion relating to prices for Sundym 410 took place, but no agreement was reached. Pilkington […][284].

(130) The Commission points out that Pilkington admitted having had the discussion described in the Statement of Objections about end prices for certain of the product ranges under investigation. It is notably recalled that

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278 See document labelled EFL3, p. 3514 and 24201.

279 See […] description of the participants as well as the subject matters discussed between competitors, […].

280 See document labelled EFL3, p. 3514 et seq and p. 24201.

281 See handwritten notes of […] dated 28 May 1998, p. 11457-11459 and 5 June 1998, p. 11460-11461. In case of the R19 model, being an old one, it related to OE replacement glass only.

282 See document labelled SM44, file 5, written by […] of AGC, p. 1422-1423, […] and document labelled EF12, p. 685-692, […].

283 […]. For the description of the "productivity gains" concept, refer to section 4.1.1.1.

284 See page 52 of Pilkington's response to the Statement of Objections: […].

an agreement can be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It is not necessary for the participants to have agreed in advance upon a comprehensive common plan but it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way. The Commission refers to section 5.3.2.1 and to the case-law cited therein and maintains its conclusions about the anti-competitive nature of the exchange of information which occurred during this meeting.

4.4.1.1. Summary

(131) The contacts between Saint-Gobain, Pilkington and AGC in 1998 involved coordinated actions regarding the following manufacturers: […] (handwritten notes of Mr […] of AGC contain estimations of the Big three's respective shares of supplies to […] for the year 1998), […] (contacts on 18 May, 28 May, 17 June, 23 June, 16 September, 29 September, in November, telephone call on 8 December and finally a contact for which only the year 1998 could be specified, and […] (in spring and on 9 October).

4.4.1.2. Chronological description of the contacts

(132) After the meeting of 10 March 1998 described in detail in recital (125), a trilateral meeting took place in spring of 1998 […][285]. Other than Mr […], […] of Saint-Gobain, Mr […] of Pilkington also took part in the meeting[286]. During this meeting the competitors exchanged price information as well as other commercially sensitive information regarding the upcoming RFQ for the […] with a view to allocating the supply of the carglass parts as well as obtaining a high price for the parts to be supplied[287]. In order to arrive at the intended price level the competitors compared the current price charged by Pilkington for the […]. In order to calculate a reference price the competitors added 25% to the price of the […] windscreen, as the surface of the […] windscreen was also 25% larger than the windscreen of the […] to agree on a price for the […] quotation to be submitted to […]. […] AGC wanted Saint-Gobain and Pilkington to "cover" it on the windscreens[288]. Indeed, as can be seen from the answer of [...][289]. As regards this trilateral meeting, the Commission notes that in its response to the Statement of Objections, Pilkington acknowledged that its employee Mr […] "*attended this meeting and that the purpose was to explore the possibility of an understanding to allocate supply for the new […]*"[290], even though it claims that no understanding was reached. As regards this latter claim, the Commission refers to recital (130) as well as to section 5.3.2.1.

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285 See […].

286 See […].

287 See […].

288 See […]. For the meaning of the expression "to cover", see recital (103).

289 See [...] Article 18 response of [...].

290 See Pilkington's response to the Statement of Objections, p. 173.

(133) Handwritten notes dated 18 May 1998 and taken by […] of AGC show that Saint-Gobain, Pilkington and AGC exchanged price information in relation to glass parts (windscreen, rear window, sidelights, quarterlights) and certain supplements, for example for dark tinted glass such as Atherman, AGC's tinted glass brand, and for coating, for several Renault models. These price exchanges covered the period until the end of 2000. Prices were also exchanged while being compared with the target prices requested by Renault for the Vel Satis model (the X73).[291] It can moreover be observed that the competitors discussed price reductions according to productivity gains for 1999 and 2000 vis-à-vis Renault. The intent was to maintain the previously given prices for a vehicle model and reduce them in 1999 and 2000 according to productivity gains in a coordinated manner in order not to disrupt their respective supply positions: "*Principle: to keep going on its own basis and foresee a decrease for end December '99 and end December 2000; we cover first ± 1 FF in order not to make the same prices*"[292].

(134) Shortly thereafter, during a contact between […] of AGC and Mr […] of Saint-Gobain ("[…]") on 28 May 1998, the objective fixed during the contact on 18 May 1998 to coordinate prices with a view to passing on productivity gains for 1999 and 2000 was confirmed.[293] As can be seen from the handwritten notes of Mr […], the envisaged discounts based on prices in December 1998 would amount to […] by the end of 1999 and to […] by the end of 2000: "*principle confirmed for '99 and 2000; starting from the prices dec. '98 → […] end 99 and […] end 2000 ; keeping on the current models*"[294]. According to Saint-Gobain, Pilkington regarded this target as realistic: "[according to Pilkington] *this should hold*"[295].

(135) During the same contact on 28 May 1998, […] as reflected in the handwritten notes of Mr […], Mr […] of Saint-Gobain, whose company held 40% of the business of Renault, queried the impact of the merger between Splintex and PPG[296] and in particular what market share the new combined entity would have[297]. The notes referring to market shares for the Renault account illustrate what a high share of supply the company resulting from the merger between PPG and Splintex would have, and this was what Saint-Gobain was worried about; however, […] did not give this information to Saint-Gobain but just calculated it for himself.

(136) Furthermore, during the contact on 28 May 1998 Mr […] of Saint-Gobain and Mr […] of AGC exchanged price information about Saint-Gobain's

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291 See […].

292 See […]. See also documents […]. The original French at page 11544 reads as follows: «*1. Principe: rester sur ses bases et viser une baisse à fin décembre '99 et fin décembre 2000; on passe en 1er donc couvrir à ± 1 FF , pour ne pas faire les mêmes prix.*».

293 See […].

294 See handwritten notes of Mr […] labelled document 4 page 1, p. 11548. The original French reads as follows: «*Confirmé le principe pour '99 et 2000: à partir des prix dec. '98 → […] fin 99 et […] fin 2000 ; on reste sur les modèles actuels* ».

295 In the original French it reads: «*ça devrait tenir*».

296 See M.1230 Glaverbel/PPG, Decision of the Commission of 7 August 1998. http://ec.europa.eu/comm/competition/mergers/cases/index/m24.html

297 See […].

Venus price supplement for the heated backlight (LAC), that is FRF 18.30 whereas AGC' price was FRF 20.95: "**Venus : + 30 FF of m^2 on LAC 65 hence, it comes back to ± our offer 170,60 → 191,55 Δ = 20,95 0,61 m^2 x 30 FF = 18,30 + 40 FF of m^2 if minimal quantities compared with one 65*".[298]

(137) In its written response to the Statement of Objections Pilkington disputed that it was involved in the discussions of 18 and 28 May 1998 at all[299]. According to Pilkington, it rather seems that […] recorded an internal discussion with […] or at most a discussion with Saint-Gobain (Mr […]). In any event Pilkington claims that there is no proof that it was involved in this discussion.

(138) The Commission observes that the notes recorded the discussion between a representative of AGC (it is irrelevant whether it was […] or […]) and a representative of Saint-Gobain (Mr […]). Saint-Gobain has neither contested nor denied the contact. Although no name of a representative of Pilkington is mentioned in the notes, it is plausible that Pilkington was contacted by one of the parties to get its opinion, since Pilkington's position is cited several times and taken into account to establish the subsequent actions. For instance, in the notes at stake it is written "*Splx well placed, but not the lowest → PB*"[300] and when drafting the follow-up actions after this contact, the representative of AGC wrote: "*Quid PB for prices?*" and repeated: "*X73, Splx well placed, but not the cheapest → see PB*"[301], PB being the acronym for Pilkington. This is a clear sign that Pilkington's position was taken into account before making any decision vis-à-vis the car manufacturers. Lastly, even in the event that the notes referred to an internal conversation between two AGC employees, it is clear that they reported on direct or indirect contacts they had had with Saint-Gobain and Pilkington concerning the topics described in the notes cited and referred to in the Statement of Objections. Therefore Pilkington's argument cannot be accepted.

(139) According to […] notes of 28 May 1998, the next contact was foreseen for 5 June 1998 between AGC and Saint-Gobain and the purpose of this contact was to exchange commercially sensitive information with a view to sharing the supply for the replacement windscreen for the Renault model R19. […], Mr […] had launched an idea referred to in the document as a "*psychological operation*"[302]. AGC was the supplier for the R19 windscreens for Renault. Saint-Gobain wanted to show that it was undercutting AGC's prices by supplying the windscreen from an "exotic" country where their costs were higher. Saint-Gobain's true intention was,

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298 See […]. The original French reads as follows: «**Venus:+30 FF du m^2 sur LAC 65 donc ça revient à ± notre offre 170,60 → 191,55 Δ = 20,95 0,61 m^2 x 30 FF = 18,30 + 40 FF du m^2 si quantités moindres par rapport à une 65*».

299 See page 106-107 of Pilkington's response to the Statement of Objections.

300 See page 11546 of the file. The original French reports a statement of […]: "*Splx bien placé mais pas le plus bas → PB*".

301 See […]. The original French reads: «*Quid PB pour les prix?*», «*X73 Splx bien placé, mais pas le moins cher → voir PB*».

302 It reads «*opération psychologique*» in the original French text. See […].

however, to "cover" AGC prices, and thus it could justify its higher prices by saying that the glass came from an "exotic" country: "*to be seen next time (05/06), windscreen OES, psychological operation, he* [Mr […] of Saint-Gobain] *wants to pretend to attack us on the tinted laminated WS R19, but he asks for our offer in order to cover us from an exotic country, to be followed* (…)."[303]

(140) A work document prepared by […] of AGC dated 17 June 1998, which he completed with information he received from competitors at the various contacts that he had with Mr […] of Saint-Gobain, refers to "*evolution of glass prices for OES, "big volumes"*"[304] for Renault. In autumn 1997, Renault had sent a RFQ to at least AGC and Saint-Gobain asking the suppliers to submit quotes for the "*windscreen big volumes for the replacement market*"[305] concerning windscreens ('PBF', pare-brise feuilleté or laminated windscreen) for four models, the Super 5, the R 21, the Clio and the R 19, which represented a total of 317 000 windscreens. The notes made by […] at the bottom of the page containing the table illustrate the estimated shares of each competitor with regard to the total quantity of windscreens for the four models in the period 1996-1999. As can be seen, AGC should have 41%, Saint-Gobain 35% and Pilkington 24%. Moreover, the share of each competitor in terms of turnover for the four models is also indicated (this was calculated by multiplying the quantities of windscreens by the respective prices). Such a table was drawn up with a view to sharing the supply of replacement glass (OE):

- "*Splx [Splintex=AGC]*	*130 000 PBF*	*41%*	*26 580 000 FF*	*43%*
- SGV [Saint-Gobain]	*112 000 PBF*	*35%*	*19 130 000 FF*	*31%*
- PB [Pilkington]	*75 000 PBF*	*24%*	*15 745 250 FF*	*26%*
	317 000 PBF		*61 455 250 FF*"[306]	

(141) In its written response to the Statement of Objections Pilkington argued, firstly, that the Commission's conclusion that the table drawn by […] is based on data received from competitors is a matter of conjecture[307]. Secondly, according to Pilkington, the shares of supply mentioned in this document were those already held and not those expected.

(142) The Commission does not find Pilkington's arguments convincing. It is noted that the statement […] relating to this table clearly affirms that this document "*is a table prepared by* […], *which he completed with information he received from competitors at the various meetings and/or*

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303 See handwritten notes of Mr […], document labelled 4/4 p. 11550. See […]. The original French reads as follows: «*A voir la prochaine fois (05/06) -Pare-brise MPR* [marché pièces de rechange, OES] *« opération psychologique* » « *il veut faire semblant de nous attaquer sur le PBF R19 teinté*» «*mais il demande notre offre pour nous couvrir à partir d'un pays exotique, à suivre (...)*».

304 In the original French «*évolution des prix vitrages, MPR "gros volumes"*», p. 11487 of the file, […].

305 In the original French: "pare-brise gros volumes destinés au marché de la rechange". See […].

306 See page 11487 of the file […].

307 See page 107 of Pilkington's response to the Statement of Objections.

calls that took place"[308]. Hence, it is not about a conjecture of the Commission but […], which in this instance has remained uncontested. As to the second claim, the document does not suggest that Pilkington's conclusion is correct. […] explained that the shares reported in the bottom of the table are those "estimated" for each competitor, which suggests that […] calculated the shares supposed to be held by each competitor at the end of the year 1998 including the orders ("*prix en c.de*") to be delivered in December 1998. In view of these elements the Commission maintains its conclusions on the probative value of this table as expressed in the Statement of Objections.

(143) According to the handwritten notes of […] dated 23 June 1998, it can be concluded that a further contact between […] and Mr […] ([…]) took place, in particular in relation to the following Renault models: Vel Satis (the X73); Clio (the X65); Laguna (the X56); Laguna II (the X74) and Laguna break (the X74 B). The competitors exchanged price information regarding Saint-Gobain's Venus supplement with a view to allocating the supply contracts for these models. For instance, the section in the notes referring to "Laguna 340" are prices provided to AGC by Saint-Gobain for the tinted backlight with and without the Venus supplement which represented FRF 21. Mr […] noted down that […] had previously stated that the price for the Venus supplement was FRF 30 to 40 "(*and he had said + 30 to 40 FF*)".[309]

(144) As can be seen from the handwritten notes by Mr […] dated 16 September 1998, during a telephone contact with Mr […] of Saint-Gobain, following a meeting on the previous day, AGC and Saint-Gobain exchanged price information regarding the Laguna model and information as to how they would approach Renault with a view to sharing the supply of carglass for this model.[310] This first line of the handwritten notes indicates that Renault wanted to discuss the supply situation for the Laguna.[311] […], Renault had sent a new quotation request six to twelve months before the end of the

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308 See page 18577 of the file.

309 See handwritten notes of Mr […], document labelled 9/1, file 40, p.11555. The original French reads as follows:

« X 56.....? *Venus au m²* *au m² et à la pièce*

X 74....? *"* *"*

Laguna 340 → 361= 21 FF *(et avait dit + 30 à 40 FF)*

X 73	*P. AR*	*38*	*0,54 m² + 10 FF*	*(avant avait dit*
		35	*0,5 m²*	*+ 18 et + 15FF)*
LAC		*190*	*1,06 m² + 17 à 20 FF (était + 40) PB + 18/20".*	

310 See […].

311 As said, the code name for the Laguna model is X56. As […] put it: "*faire une tournante d'horizon X56 1 seul fourniss*".

Laguna series production with prices to be quoted for 1998, 1999 and 2000. According to these notes, Renault wanted to have a sole supplier. Winning contracts for the end of the vehicle's life was attractive for carglass producers as it would also imply supplying replacement (OES) parts. With a view to allocating the winner for this contract, Saint-Gobain and AGC (still "PPG" in the notes) exchanged price information.[312]

(145) These notes show that AGC and Saint-Gobain exchanged information as to how to approach Renault. The notes reflect that Mr […] ("*il*") would give a price of between -1 and -2% which would mean that Saint-Gobain's prices would be higher than AGC' prices in order to "cover" AGC: "*If Renault asks for an effort (meeting on 24.09) don't go further below, but there will be a political decision (he* [Saint-Gobain] *will do -1% -2%, hence he will be some FRF more expensive)*".[313]

(146) From the handwritten notes of […] dated 22 September 1998 it can be seen that a meeting was foreseen to take place on 29 September 1998 in Fleurus, Belgium, at the premises of AGC between "S", "P" and "Spl", which stand for Saint-Gobain, Pilkington and Splintex (=AGC): "*29.09.98 Fleurus / same place 08h 30 1S + 1P + 2 Spl*". During this meeting on 29 September 1998, price information concerning prototype costs and tooling costs as set out in the RFQ was due to be exchanged between the three competitors in relation to the Renault Mégane, (the W84) in order to share the supply for this model. The agenda looked as follows: "** W84 * price functions + proto*[type]*s and tooling cost * W76* (…)".[314]

(147) In its written response to the Statement of Objections[315] Pilkington argued that from the presence of the agenda of this meeting it could not be inferred that the meeting took actually place.

(148) The Commission responds that Pilkington has not substantiated its claim that the meeting did not in the end take place. Furthermore, the taking place of the meeting in question has not been contested by the other participant Saint-Gobain. Therefore, the Commission maintains its conclusions on the existence of the meeting in question.

(149) According to a document copied by the Commission, on 9 October 1998 a meeting was held between Mr […] of Saint-Gobain and Messrs […] of Pilkington at the Paris Charles de Gaulle Airport Hyatt Hotel[316]. During this meeting, one the points of the agenda concerned "laminated sidelights". The two competitors "*agreed that P* [Pilkington] *& SGV* [Saint-Gobain Vitrage] *should quietly examine potential mutual benefit of cooperation first (with working Asahi et al) examining (...) & objectives &*

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312 See […].

313 See […]. The original French text reads: «*Si Renault demande un effort (r.d.v. le 24.09) ne descendre pas + bas, mais ce sera une décision politique (il* [Saint-Gobain] *fera du –1% -2% donc il sera de quelques FF + cher)*».

314 See […].

315 See page 108 of Pilkington's response to the Statement of Objections.

316 See […], transcript of document labelled EFL3, p. 87, p. 24287.

potential shared or other activity."[317] Mr […] moreover informed Pilkington that it was "*positive that commercial involvement is required, agreed to arrange until meeting* […] [Pilkington] & […] [Saint-Gobain]". As can be seen from these minutes, Saint-Gobain and Pilkington intended to involve AGC in the "cooperation" in respect of sidelights and the potential on other activity by the three competitors[318]. According to Pilkington[319], this cooperation related to the "benefits of cooperation in defining test standards for laminated sidelights". However, the Commission notes that these minutes were taken in the context of discussions which went beyond such a simple technical cooperation. No particular customer is cited in relation to this "cooperation". Hence, the Commission concludes that the cooperation was in principle supposed to extend to all car manufacturers.

(150) […] has provided a table of 6 pages, hereafter referred to as the "Mégane allocation table", used by […], consisting of pages all dated 3 November 1998[320]. It was prepared by AGC and contain prices for "Italy" (meaning Pilkington), "France" (meaning Saint-Gobain) and "Belgium" (meaning AGC). The "Mégane allocation table" consists of more sub-tables. Each sub-table relates to a specific model, Mégane 5D (the B84), Mégane 3D (the C84), Mégane monospace (the J84), Mégane berline 4D (the L84) and a specific Renault factory, Douai in France or Palencia in Spain.[321] The basis for this table was the RFQ that Renault had sent to a number of suppliers for the new Mégane models that were to be produced. The RFQ contained technical specifications for the glass parts for these new Mégane models. The purpose of the Mégane allocation table was to help ensuring that the prices for carglass supplies for the upcoming contract for the new Mégane were priced above the minimum prices for the old Mégane. These sub-tables were thus prepared with a view to […] using them to help calculate AGC's quotation prices per part for the new Renault Mégane and to ensure that this price was above the price for the old Mégane supply contract. The Mégane allocation table was to be used as a form of benchmarking used as from November 1998 and contains Pilkington's, Saint-Gobain's and AGC' prices for glass parts for the old Mégane, Renault's target prices for the old Mégane (shaded in yellow) and AGC's preliminary minimum prices for glass parts for the new Mégane as well as a number of product, technical and price data which were compared between the competitors at the meetings and/or during telephone calls with a view to sharing the supply of carglass parts for these upcoming Mégane models. It should be noted that the arrangements between the three competitors in relation to Renault in 1998 and 1999 concern supplies in particular for the Mégane until 31 December 2003.[322]

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317 See point 6 of the agenda, document labelled EFL3, p. 3514 and p. 24201, see also […] p. 24268-24270.

318 This cooperation also concerns GM and its Opel Zafira model. Document labelled EFL3, p. 24201.

319 See Pilkington's Article 18 response of 30 May 2006, p. 43 (answer to question 65), file 80, p. 40308.

320 See […].

321 See […].

322 See handwritten notes of Mr […] of 20 September 1999, […].

(151) The source of the information on Pilkington's prices in the Mégane allocation table was primarily Pilkington. In particular Mr […] supplied to […] Pilkington's pricing information on supplies for the old Mégane during a series of contacts in the period from May to November 1998. The information on Saint-Gobain's prices is primarily from Saint-Gobain. Mr […] disclosed Saint-Gobain's prices to […] during a series of contacts in the same period.[323]

(152) In its written response to the Statement of Objections Pilkington argued that there is no proof that this table was drafted with Pilkington's contribution and suggested that Mr […] drew the table for his own purposes[324]. The assertion in the Statement of Objections that technical and price data contained in the tables were shared with other competitors at meetings or during telephone calls is, according to Pilkington uncorroborated by other evidence. Pilkington finally also states that the allegation in the statement of 7 April 2006, regarding the fact that data concerning Pilkington was supplied to AGC by Mr […] of Pilkington, is general and based only on vague uncorroborated comments.

(153) The Commission notes that […], concerning this point, reads as follows: "*the source of the information on Pilkington's prices was primarily Pilkington. In particular Mr* […] *supplied to Mr* […] *Pilkington's pricing information on supplies for the old Mégane, during a series of contacts in the period from May to November 1998. (...) This table was (...) used by Mr* […] *to prepare himself for the up and coming discussions with Pilkington and Saint-Gobain on the new Mégane. (...) In November 1998, Pilkington, Saint-Gobain and* [AGC] *tried to agree prices for glass parts for the new Mégane models. During these discussions, information on prices for the old and new Mégane was exchanged among Pilkington, Saint-Gobain and* [AGC]"[325]. As can be seen, […] is not vague but well circumstantiated as to the references to the source of the information and the use made subsequently of these data. Therefore, the Commission does not change its conclusions on the probative value of these documents as set out in the Statement of Objections.

(154) At the end of this Mégane allocation table, a comparative overview from December 1997 to December 2000 of the prices of AGC ("Belgium") and Saint-Gobain ("France") for the backlight of the old Scénic model is set out[326] as well as price information provided by Mr […] of Saint-Gobain. […] provided a copy of the original document on which Mr […] made handwritten price annotations. This document was given to Mr […] by Mr […] in or around September 1998[327] and consists of a spreadsheet containing Saint-Gobain's pricing data added by hand, Mr […] used these prices by Saint-Gobain and added them to his table.[328] It should be noted that this document contains the handwriting of Mr […], as the handwriting

323 See […].
324 See page 109 of Pilkington's response to the Statement of Objections.
325 See […].
326 See […].
327 See […]. The date on the document, that is the 28 September 1998, was hand-written by […].
328 See […].

matches the handwriting of documents copied by the Commission in the office of Mr […] of Saint-Gobain in France.[329]

(155) Mr […] took handwritten notes of a contact with Mr […] in 1998 in relation to the Renault models Vel Satis (the X73) and the Laguna II (the X74). The name in the upper right corner of the notes is "[…]" who was […]'s […] in Saint-Gobain.[330] At the time the supply situation for the preceding Mégane model was 65% for AGC and, as can be seen from the notes, Saint-Gobain, who was the leading supplier, wanted the supply of the heated rear window ("Heated Rear Window", or "LAC" in French)[331] and of the sidelights ("LTB" in French)[332] while informing Mr […] that AGC would keep their share of 65% as follows: "*We are leader I would like to get 1 small heated rear window and SideLites you will get your 65%*"[333].

(156) Based on the handwritten notes of Mr […] of AGC, Mr […] contacted Mr […] of Saint-Gobain on his mobile telephone on 18 December 1998. The handwritten notes contain the mobile phone number of Mr […], a number which was confirmed by a document copied by the Commission.[334] The topics of the agenda with Saint-Gobain as set out in the notes demonstrate that the two competitors intended to exchange commercially sensitive information such as the strategy to adopt with regard to the Renault Espace model (the W81): "[…] *Clarify certain matters, check the state of play Strategy W81*"[335].

(157) Overall, as regards the type of information exchanged, the Commission makes reference to the handwritten notes of Mr […] of AGC containing estimations of the Big three's respective shares of supplies to PSA for the year 1998. The notes illustrate that AGC ('Z') would have an estimated share of 25%, 26.9% and 29.0% (depending on each competitor's own estimates); Pilkington ('Y') would have 22.6%, 22.2% and 26.0%; and Saint-Gobain ('X') would have 52.0%, 49.7%, and 44.0% in 1998.[336] This handwritten note is an early example of the Big three comparing their respective positions, in this case for a particular account, in order to anticipate the intentions of the other players. The three competitors did this kind of exercise also for the entire EEA market and for the period 1999-

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329 See documents labelled CD14, p. 5348-5354 and CD15, p. 5355-5369 containing handwritten notes by Mr […].

330 See […].

331 "LAC" stands for "lunette arrière chauffante" (heated rear window).

332 "LTB" stands for "latérale trempé bombé" (sidelights).

333 See […]. The original French reads as follows: «*On est leader je voudrais avoir 1 petite LAC et LTB vous aurez vos 65%*».

334 See […], see document labelled SM25, p. 1312-1313, […].

335 See […]. The original French text reads as follows: «*Clarifier certaines choses, faire le point Stratégie W81*».

336 See […]

«		*SPX*			*SGV*			*PILK*	
PSA	*X*	*Y*	*Z*	*X*	*Y*	*Z*	*X*	*Y*	*Z*
98	*52.0*	*22.6 (1,889)*	*25.0*	*49.7*	*22.2 (2,180)*	*26.9*	*44.0*	*26.0 (2178).*	*29.0*

2003, as shown by a document copied by the Commission and reproduced in recital (114)[337]. This facilitated the allocation scheme, which was one of the objectives of the agreements between the competitors. Insofar as the competitors attempted to anticipate each other's behaviour on the market through this exercise thereby reducing competition, the Commission considers the exchange of this kind of commercially sensitive data contrary to Article 81 of the Treaty.

4.4.2. 1999

4.4.2.1. Summary

(158) During 1999 the contacts between Saint-Gobain, Pilkington and AGC became more frequent. The meetings and contacts involved coordinated actions regarding several upcoming supply contracts as well as existing vehicle contracts. In particular, there were two trilateral meetings in the beginning of the year 1999 and on 20 September 1999 and a further trilateral contact on 15 January 1999. The competitors moreover had at least 10 bilateral contacts during the year: Saint-Gobain and AGC communicated with each other on eight occasions on 12 February, 22 April, 16 June, 20 September, 30 September, 26 October, 2 November and 11 November, Saint-Gobain and Pilkington on 15 July while AGC and Pilkington met on 9 March.

(159) The exchanges between the competitors covered models manufactured by PSA (during 1999, as can be seen from document of 17 December 1999, on 20 September, 30 September, 26 October and 2 November) Renault (12 February, 9 March, 22 April, 16 June, 20 September, 30 September and on 11 November), Volkswagen (15 July) and General Motors (meeting in early 1999).

4.4.2.2. Chronological description of the contacts

(160) A document copied by the Commission consisting of handwritten notes made by Mr […] AGC's […], shows that the three competitors exchanged information in relation to prices and quantities concerning dark tinted and coated windscreens for the […] models […]. The notes, which are dated 15 January 1999[338], were made by Mr […] during telephone contacts with Saint-Gobain and Pilkington which took place from September to December 1998. The handwritten notes contain a summary of price as well as other commercially sensitive information including quantities exchanged between Mr […] of AGC, Mr […] of Saint-Gobain and Mr […] of Pilkington. In particular, these notes relate to Pilkington's and Saint-Gobain's prices and, more importantly, the envisaged price reductions and price increases that the competitors intended to make to […] in exchange for an overall increase in quantity of coated windscreens to be delivered to […] from 300 000 up to 380 000 in 1999: "*SGV: delivered quantities during 98 (PET) =300,000 ; accepts to move to 380,000 in '99 with a price increase on […] (+40* FF) […] (+50*FF), […] (+100*FF) (= + 12MIO*

337 See document labelled CC4, p. 1490-1492

338 See document labelled SM44, p. 1, p. 1422. See also […].

FF on TO). Reduction of 30 FF on […] (= -0,7 MIO FF on TO)".[339] It can also be seen that the competitors exchanged information regarding estimated supply volumes and annual production capacity for the coated windscreens for the […] models: "*PB* [Pilkington]*: PBF […] Teinté 203FF Siglasol (PET)*[340] *255FF = ○ 152FF quantities '98 = 50,000 capacities PB in PET 100,000/150,000*".[341]

(161) In its written response to the Statement of Objections[342] Pilkington did not dispute that some data have been supplied by Saint-Gobain and Pilkington. However, Pilkington claims that the data submitted do not concern future pricing intentions.

(162) The Commission observes, firstly, that Pilkington admitted the participation of its representative in this meeting where commercially sensitive information on prices and quantities was exchanged. Secondly, the exchange of this information does not only relate to the past, but also to a forecasted increase of quantities for 1999 in exchange for a price reduction per piece. Thirdly, Pilkington contends that the Commission was not able to make clear how it considers this exchange of data to be part of an agreement. Yet, the Commission included this contact in paragraph 372 of the Statement of Objections among those contacts related to co-ordination of prices, since the knowledge of the prices given by other players allowed competitors to co-ordinate their pricing strategies, making it clear that the exchange of commercially sensitive information which occurred at this meeting was one of the features of the agreement. Therefore, the Commission disagrees with Pilkington's explanations and maintains its conclusions as set out in the Statement of Objections.

(163) In early 1999 a meeting was held between […] […] of Saint-Gobain, Pilkington and AGC to discuss the upcoming negotiations for the […], also referred to as the […]. […], this meeting was held at the Brussels Holiday Inn or Novotel Airport Hotel and participants in this meeting were from Pilkington either Mr […] or Mr […], from Saint-Gobain Mr […] and from AGC Mr […].[343] The competitors exchanged information with a view to sharing the […] business amongst themselves and discussing the price levels they intended to offer. The table entitled "*Summary + Targets*" provides an overview of the different prices each competitor intended to quote for the different glass parts on the […][344]. It was envisaged that AGC would obtain the front fix and quarterlight windows, both encapsulated, its quotation in euros for this piece being the lowest, 20.95 (for the green glass) and 24.02 (Sundym), against 24.44 and 27.28 for Pilkington, that Pilkington would obtain the door glass and backlights (for instance 9.87 against 12.15 for AGC and no quotation for Saint-Gobain) and that Saint-

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339 See document labelled SM44, p. 1, p. 1422. See also […]. The original French text reads as follows: «*SGV: quantités livrées en '98 (PET) =300.000 ; accepte de passer à 380.000 en '99 avec une hausse de prix sur […] (+40* FF) […] (+50*FF), […] (+100*FF) (= + 12MIO FF sur C.A.). Réduction de 30 FF sur […] (= -0,7 MOI FF sur C.A.)*».

340 In general, the reference PET is used as a short hand for a coated windscreen.

341 See document labelled SM44, p. 1, p. 1422. See also […].

342 See page 110 of Pilkington's response to the Statement of Objections.

343 See […].

344 As explained, 'X' stands for Saint-Gobain, 'Y' for Pilkington and 'Z' for AGC. See document […].

Gobain would obtain the windscreens (according to the table, its quotation would be 44.69 for the green and 90.72 for the coated piece, while for the same piece Pilkington would quote 46.25 and 100.60).

(164) In its written response to the Statement of Objections[345] Pilkington argued that […] was not corroborated by any piece of evidence. Notwithstanding this, Pilkington confirmed "*that such a meeting did take place*" and that it took part in it. However, Pilkington denied any kind of agreement relating to the vehicle in question (or on any other topic) reached at this meeting.

(165) The Commission notes, firstly, that Pilkington has admitted both the existence of the meeting and its participation in it. Secondly, as to the evidence, […] is sufficiently clear as to the participants (confirmed by Pilkington itself and not contested by Saint-Gobain) and the topic discussed. […] is therefore credible in the light of the body of consistent evidence submitted by it and which remained uncontested by another participant. Therefore, the Commission maintains its conclusions on the existence of this meeting and the content of the discussions.

(166) On 12 February 1999 a contact was made between […] of AGC and Mr […] of Saint-Gobain during which the two competitors exchanged information about the Espace model (the W81); the Mégane (the J64) and the Laguna.[346] According to […] notes, AGC ("SPL") and Saint-Gobain ("SGV") envisaged to split the laminated windscreen ('PBF') of the Laguna model between each other.

"(…)* *PBF Laguna teinté* *255* *SPL* *Serie* } *50%*
de ce qui }
reste }
260 *SGV* *Serie* *50%* ".[347]

(167) On 9 March 1999, Mr […] of AGC had a contact with Mr […] of Pilkington referred to as "I",that is to say Italy meaning Pilkington, during which they exchanged information in relation to the OE replacement glass market (marché pièce de rechange or 'MPR'). The two competitors exchanged information about proposals for the old Clio model (the X57) to be submitted to Renault: "*MPR He* [Renault] *told us about it but no letter for the moment (idem F). Proposals valid for 100% x 57; without this nothing*".[348] "F" stands for France,namely Saint-Gobain. The last sentence indicates that Pilkington informed AGC that it had submitted a price for the totality of the windscreens for the X57 but if Pilkington did not get the 100% they would supply no windscreens.[349]

345 See page 173-174 of Pilkington's response to the Statement of Objections.
346 See […].
347 See […].
348 See […].
349 See […].

(168) In the written response to the Statement of Objections[350] Pilkington argued that no sensitive data were exchanged during this contact. According to Pilkington, Mr […] was only reporting what Renault had told him, namely that Renault was only interested in bids for 100% of the business.

(169) The Commission disagrees. Apart from the sentence referred to by Pilkington, which constitutes only the first part of the statement reported in the notes, the simple reading of the next line of document 17 shows a much more articulate conversation with an exchange of opinions about the bid for the coated windscreen of the Laguna for the OE replacement market. Mr […] accused Mr […] of having cheated, which implies that they had a "covering" agreement that Mr […] did not respect when submitting the offer to Renault. The answer by Mr […] to justify the move away from what Mr […] believed had been agreed to is that he had spoken about a trend, not about a commitment. In the light of this, the Commission maintains its interpretation of the contact as set out in the Statement of Objections.

(170) On 22 April 1999, Mr […] of AGC had a contact with Mr […] of Saint-Gobain ([…])[351] during which they exchanged information with a view to increasing prices for the replacement market for laminated windscreens ('PBF' or "*parebrise feuilleté*") for the OE replacement market, a topic which would be further discussed ("*à réflechir*") between the three competitors at upcoming meetings. It can be seen from the notes of Mr […] that the competitors intended to have future meetings either at the home of Mr […] of Pilkington ("*chez* […]") or at the home of Mr […] of Saint-Gobain ("*chez* […] "): "*MPR : ex. increase certain prices on the tinted and decrease with as much the laminated windshield to reflect on risk of losing the laminated windshields (...) next meeitngs either at* […] *or* […] *very dangerous Next week on holiday*".[352] It is noted that the competitors seemed to be aware of the problematic nature of the meetings ("*très dangereux*").

(171) On 16 June 1999, Mr […] of AGC had a contact with Mr […] of Saint-Gobain ([…])[353] during which they exchanged price information for the windscreens of the Laguna, for the Master (the X76) and for the Trafic (the X70): "*(...) 10,000 Laguna laminated windshields in layers at 450 FF (...) 2. X 76 laminated windshields (SPLX 190 FF) price 198 tinted (...) 3. X 70 231.71+2.29=234.00 cover at 240 or 250*".[354] As can be seen, regarding the Master, the competitors envisaged to 'cover' for each other. They also exchanged price information in point 4 of the notes as a follow up to the contacts on 18 and 28 May 1998 regarding price reductions for 'productivity gains'. During this contact they also envisaged price

350 See page 111 of Pilkington's response to the Statement of Objections.

351 See […].

352 See […]. See document labelled SM25, in which the same abbreviations of Mr […] and Mr […]'s names were used, p. 1312-1313. The original French text reads as follows: «*MPR :ex. augmenter certaines prix sur les trempés et baisser d'autant les PBF à reflechir risque de perdre les PBF (...) réunions prochaines ou chez* […] *ou chez* […] *Très dangereux Sem. proch. en vacances.*»

353 See […].

354 See […].

coordination for such models. In particular, the competitors agreed to apply between 1-2% reduction in 2000 (compared with the -2% reduction foreseen in May 1998 for 2000) and 2001 each year, and no reduction in 1999 if the competitors' shares were maintained and the 1999 results were positive.[355]

(172) According to a document dated 15 July 1999 and provided by the informant[356], Mr […] of Saint-Gobain and representatives of Pilkington exchanged price information relating to the target price requested by Volkswagen concerning the Polo A04 model for the rearwindow, the windscreen, the quarter lights as well as the sidelights. The handwritten notes by […][357], which are attached to a fax that Mr […] received from[…], a German assembler, contain a price comparison for these glass parts as well as an exchange of information in relation to the annual demand of glass pieces for the Polo A04. The document shows four columns with price references made to 'S' (which has been indicated by the informant as referring to Splintex, but it is likely that it actually refers to Saint-Gobain), to 'P', meaning Pilkington, to 'A', which stands for AGC, and to […]. The first two columns, namely 'S' and 'P', are completed with prices for several carglass items, which is, in the Commission's view, the proof of the fact that these two competitors were party to the contact.

(173) […] notes dated 20 September 1999 contain an agenda of a meeting with Mr […] of Saint-Gobain ([…], see recital (171)) due to take place later on that day which […] was agreed on in a telephone contact in the morning prior to the meeting in the afternoon: "** Target 84 + process sheets to be documented * 206 WS in Poissy?? * T.O. M49 Berlingo: (...) * end of life Laguna * % Sogedac*".[358] Pages 2 to 5 of the same hand-written notes relate to a meeting that took place later on 20 September 1999 in Paris.[359]

(174) The meeting referred to in recital (173) took place in Mr […]'s apartment located in the 16th district of Paris between Mr […] of Saint-Gobain, Mr […] of Pilkington and Mr […] of AGC.[360] It can be seen from […] notes that the competitors exchanged information, prices and other commercially sensitive information with a view to sharing the supply of glass pieces to PSA for the following Peugeot/Citroën models: 206, the Berlingo (the M49), 307 (the T5), 307 break (the T52), the 306 (the T49), 307 coupé convertible (the T56) and 206 coupé (the T16).[361]

(175) On the basis of the same notes, it can be concluded that the competitors exchanged information about their respective shares for the customer Peugeot by reference to volume (m2) and value ('C.A.' referring to '*chiffre d'affaires*' or turnover) in order to compare with each other what

355 See […].
356 See pages 37 and 43 of the file.
357 See page 43 of the file. In the table, 'S' may also stand for Splintex; however, it is likely that it stands for Saint-Gobain as the informant also refers to 'A', which in all likelihood refers to AGC (or Asahi).
358 See […] The original French text reads as follows: «** Cible 84 + fiches process à documenter * 206 WS à Poissy?? * T.O. M49 Berlingo: (...) * fin de vie Laguna * % Sogedac*".
359 See […].
360 See […].
361 See […].

percentage of business that they held with the customer Peugeot. This comparison was made with a view to allocating the supply contracts for Peugeot.[362]

(176) According to page 5 of the same notes, the competitors exchanged price information regarding price supplements for Venus and Sundym tooling costs for the Peugeot T49 model.[363] Both Saint-Gobain and Pilkington informed AGC that they were not intending to supply the parts for the T49.[364] The three competitors moreover exchanged price information for the Peugeot 307 coupé convertible (T56 model) with a view to sharing the supply for this model.[365]

(177) […] as can be seen in the handwritten notes of the meeting on 20 September 1999, the competitors also intended to share the supply to Renault. In particular, Saint-Gobain and AGC were to supply 40% respectively of the Renault business and Pilkington was to supply 20%. At this meeting, Pilkington (PB), however, is reported to have indicated that it wanted to supply 25% ("*PB claims 25% at RENAULT*").[366] As a result, the share of each competitor was recalculated on the basis of a 38/38/24 split ("*38% / 38% / 24% towards 2001/2002*")[367] instead of 40/40/20 split originally envisaged.

(178) By way of background, the three suppliers had received a request for quotation from Renault for the new Mégane but each had received different technical specifications.[368] Therefore, in order to split the supply for certain models of Renault as envisaged, the competitors exchanged price information as well as technical information regarding Renault's requested technical specifications. It can be seen from the notes that the competitors exchanged information for the following models[369]: Renault Mégane 5D (the B64), Mégane monospace (the J64), Laguna (the X64) and Twingo.[370]

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362 See […].

	«*SGV*	*PB*	*SPL*		*G.*	*PB*	*S.G.*	*Sogedac*
m²	*53 à 54*	*17 à 18*	*25,2%*	*car set*	*1,5*	*12*	*61,3%*	*= 100%*
								à ce jour
C.A.	*50%*	*23 à 24*	*27,2%*	*C.A.*	*0,8*	*18*	*54*	*= 100%*
	70% LTB							
	↘65% avec T5 ».							

363 «*T49 SGV* [Saint-Gobain] *76 FF 76 FF VENUS GRIS 10 Outill. c. 60 kF 3 moules à 700'000 FF x 3 SUNDYM PB* [Pilkington] *39 à 40 AV + 8 FF joint de m. o. 35 à 37 AR + 10 FF coût estimé joint SPX* [Splintex]*? outillages*». See […].

364 Saint-Gobain and Pilkington informed AGC that they were: "*Pas intéressé*" See […].

365 See […].

366 See […].

367 See […] "*à l'horizon*" in the original French.

368 See […].

369 The notes also include a comparison of the Nissan Micra with the Clio and the Almera (merger took place in 2000).

370 See […].

(179) According to page 2 of the notes of this meeting on 20 September 1999, the competitors exchanged information regarding Renault target prices as set out in the RFQ, which entailed an exchange of technical and commercial information in relation to the specifications required by Renault for the new Mégane (the B84) with a view to sharing the supply for the new Mégane.[371] As the target price requested by Renault did not include the transport and packaging costs[372], the competitors referred to the "*starting price*"[373] excluding these costs as a starting point for the exchange. This exchange concerned the technical offer, i.e., parts for the prototype of the new Mégane.[374] Having as a starting price FRF 181, Saint-Gobain proposed an estimated price of FRF 232 for the laminated windscreen (PBF) including transport costs ("*f.co*." refers to transport costs included) to be submitted to Renault: "*target prices – product characteristics – glazing target excluding packaging and transport/ starting price laminated windshield B64 July '99 est. SGV 232 FF f. co target 181 departure, excluding packaging 225 if final. Above and f. co + em visible borders + 15 F.F.*".[375] The competitors also calculated the price for mass production of the laminated windscreen referred to as the "*DMS"* price ('Démarrage en série' or start of series production) which was estimated to FRF 225 ("*en 2000 DMS 225*").[376] The competitors also took into account that, where the glass part had borders not protected by a cover which was required by Renault ("*bords apparents*"), FRF 15 would have to be added: "*in 2000 DMS 225 if visible borders +15 = 240*"[377] Accordingly, the competitors estimated that the price of supply of the laminated windscreen with border protection in 2000 would be FRF 240 + 15 for mass production volumes for the Mégane.

(180) Furthermore, during this meeting the competitors also exchanged technical and price information concerning the specifications requested by Renault for the new Laguna model (the X74). In particular, the competitors exchanged information for the windscreen that Renault had requested. Pilkington gave its price estimate (FRF 230 for one and FRF 238 for the other specification): "*x74 WS 230 FF 21 FT 238FF 26 FT 1.51 m² / 2.1+2.1 / price f.co* [franco] *2000*".[378]

(181) As can be seen from page 3 of the same notes, the three competitors exchanged price information also regarding price supplements for laminated windscreens ('PBF' referring to *Parebrise feuilleté*), the front sidelights ('PAV' referring to '*porte avant*' or front door), the backlight ('PAR' referring to '*porte arrière*' or rear door), the rear window ('CUST' for '*custode'* or fixed window in the rear) and the heated backlight ('LAC'

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371 […] erroneously referred to the B64, which is the old Mégane whereas these notes refer to the B84, that is the new Mégane. See […].

372 "*em*" refers to 'emballage'.

373 "*Prix départ*" in the original French.

374 See […].

375 See […]. The original French text reads as follows: "*Prix cibles - caractéristiques produits - cible vitrage hors emballage et transport/ prix départ PBF B64 Juillet '99 est. SGV 232 FF f. co cible 181 départ, hors emball 225 si definitif. ci-dessus et f. co + em bords apparents + 15 F.F.*".

376 Once the glass parts start to be mass produced they decrease, which is generally referred to as the "DMS price" ("*démarrage en série*"), See […].

377 See […]. In original French it reads "*si bords apparents*".

378 See […]. 'FT' refers to cross curvature, see […].

for '*lunette arrière chauffante*' or heated backlight) of the new Mégane to be supplied during the period 2000 to 2003[379]: " *ATH SGV + 175 FF must be increased to 415 26.10.99 DMS 2003 SGV 400 400 392 29 mm FT + 20 FF visible borders with layer PB 408 401 398 16 mm FT 230+190 = 420/425 if FT 29 mm* (…)".[380] Prices in French francs were compared with a coated windscreen reference price of specific dimensions, that is for a surface of one square metre with a cross curvature of less than 20 mm and for a surface of 1.5 square metres with a cross curvature of less than 20 mm, and it can be seen that the competitors envisaged price reductions to take into account the improved productivity over the period 2000 to 2003 as well as the price supplement foreseen for various extra features (see "*+10 if FT*" etc): "*PBF 1 m² 2000 170 ATH FT<20 2001 155 2002 145 2003 130/140 1.5 m² FT<20 2000 200 2001 190 +10 if FT 20 to 30 2002 180 +20 if FT > 30 2003 170 2° window + 10 FF if complex window + 15 FF*".[381]

(182) According to page 4 of the same notes, Saint-Gobain, Pilkington and AGC also exchanged price information regarding the Renault Twingo. Saint-Gobain was the 100% supplier of the front door window (PAV), Pilkington supplied 100% of the heated backlight (LAC) and they had each 50% on the rear fixed window (CUST). Saint-Gobain indicated that it would reduce its price by 0.15%: "*Twingo service '99 PAV → 100% SGV → 0,15% LAC → 100% PB → 0% CUST → 50% 50%*"[382] Saint-Gobain and AGC also exchanged price information concerning the Laguna model for 1999 and 2000[383], not only in relation to the glass parts for the then current Laguna model for the rear heated backlight (LAC), the laminated windscreen (PBF) and the quarter light (CUST), but also in relation to replacement windscreens.[384]

(183) Page 4 of […] notes of the meeting of 20 September moreover shows how the competitors would "cover" for each other if Renault sent a quotation request to them for the Mégane monospace (the J64). In such a case, Saint-Gobain and Pilkington would "cover" for AGC, in other words quote higher so that AGC would obtain the supply: "*J64 (...) PB and SGV cover us if price discount*".[385]

(184) According to the notes in question, the competitors also discussed how to limit the information to be provided to car manufacturers, with a view to sharing the supplies between each other. From time to time car manufacturers sent blank forms requesting the carglass suppliers to give a full breakdown of their prices for the different components of the windscreens, sidelights and backlights, which are sheets with 10-15 rows to

379 "SGV" refers to Saint-Gobain and "PB" to Pilkington. […].

380 See […]. The original French text reads as follows: «*ATH SGV + 175 FF doit augmenter à 415 26.10.99 DMS 2003 SGV 400 400 392 29 mm FT + 20 FF bords apparents avec couche PB 408 401 398 16 mm FT 230+190 = 420/425 si FT 29 mm* (…)»

381 *Ibidem*. […].

382 See […].

383 *Ibidem*.

384 See […]. Regarding replacement windscreens, see comment "*idem prix rechange*".

385 See […]. " *PB et SGV nous couvrent si remise de prix*" in the original French.

fill in. These sheets are called “décomposition de prix” and the reference in […] notes “*Décompo.*” refers to one of these sheets. As can be seen from the notes, Pilkington, Saint-Gobain and AGC exchanged information regarding which pricing elements they would be prepared to reveal to Renault. It was envisaged that AGC would give the price of 5-6 components, Pilkington would provide its daily production rate and its quote for 2-3 other components, while Saint-Gobain would not give any information: “*Decompo*[sition]. *Splx 5 to 6 usual elements PB cadences + 2 to 3 things SGV Nothing*”[386].

(185) In its written response to the Statement of Objections[387], Pilkington pointed out that the telephone call in the morning of 20 September 1999 referred to in recital (173) occurred between Mr […] and Mr […], and Pilkington therefore submits that it was not party to the discussions.

(186) As regards the subsequent meeting, Pilkington submits that the notes in question cannot be relied upon as relating to any meeting involving Pilkington. The heading […] is more likely to be referred to […] and was used on several occasions by Mr […]. Therefore, Pilkington's interpretation is that these notes only refer to a telephone contact between AGC and Saint-Gobain. On the other hand the page labelled 21/2 of this document is headed in the same way as page 21/1, that actually refers to a telephone conversation between Mr […] and Mr […] which took place on 20 September 1999, […]. Pilkington does not accept that the subsequent pages, which are headed in the same fashion, may refer to a different contact and in particular to a trilateral meeting involving Pilkington.

(187) The Commission notes, firstly, that Saint-Gobain has not denied that the telephone call between Mr […] and Mr […] occurred. Secondly, Pilkington did not bring forward evidence that the meeting in Mr […]'s apartment did not take place. It has only argued that the handwritten notes referred to by the Commission could not be directly linked to that meeting but only to the telephone call. However, contrary to Pilkington's submission, […] was very accurate in describing the context of the telephone call and of the meeting. It also indicated a precise location for the meeting in question. Not only did Pilkington not deny that a meeting in Mr […]'s apartment took place, it even admits that sensitive information about the Peugeot 307 Coupé Convertible model may have been exchanged: Pilkington stated that "*the note appears to evidence a sharing of data concerning possible price behaviour*"[388]. The Commission furthermore considers that […] is credible in view of the other available body of evidence which is consistent with the scenario depicted […] and that Saint-Gobain has not contested that its employee spoke with Mr […] on that day. The Commission concludes that, as two out of the three participants have confirmed the existence of this contact, it does not consider necessary to change its assessment.

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386 *Ibidem*. “*Décompo. Splx 5 à 6 postes habituels PB cadences + 2 à 3 choses SGV Rien*” in the original French.

387 See page 86 of Pilkington's response to the Statement of Objections.

388 See page 88 of Pilkington's response to the Statement of Objections.

(188) On 30 September 1999, Mr […] of AGC had a contact with Mr […] of Saint-Gobain during which price information was exchanged for the laminated windscreen concerning the Renault Mégane model. In particular, following an RFQ from Renault for the laminated windscreen, Saint-Gobain informed AGC that they had not responded, due to lack of capacity, but that if they had the capacity they would charge FRF 440 to FRF 450: "**PBF Mégane Ath. : saturated Price 440 to 450 if there had been capacity*".[389]

(189) As explained in recital (102), lack of capacity was often used by the competitors for the purposes of sharing the supply to car manufacturers between each other. Based on Mr […] notes dated 30 September 1999 regarding the Renault Mégane monospace (the J64), it can be observed that the two competitors intended to use this argument vis-à-vis Renault in relation to the supply of the rear door window ('PAR' or 'porte arrière') so as to force Renault to continue its dual supply from Saint-Gobain and AGC. Following a request from Renault, the competitors consequently envisaged to report to Renault that neither of them had sufficient capacity (referred to as '*saturation*') to take on 100% of the order. This tactic would have enabled them to keep their respective market shares unchanged: "**PAR J64 →answer: we should increase but in order to obtain 100% the price remains ~~37~~ the current price. We play saturation in order to keep our market shares* (…)".[390]

(190) During the same contact of 30 September the two competitors agreed to share the supply of the Peugeot 307 estate (the T52) and the Peugeot 307 Coupé Convertible (the T56) by covering for each other. As can be seen it was envisaged that Saint-Gobain "cover" AGC for the coated backlight of the 307 estate but that this was still "*to be seen*" with Pilkington: "**T52 CBL naked glass 155 x splx SG cover PB to be seen*"[391]. As regards the 307 Coupé Convertible, Saint-Gobain expressed its intention to "cover" AGC (its price being the lowest, FRF 540), by quoting FRF 560 so that AGC would obtain the supply. Mr […] would contact Pilkington to enquire whether Pilkington would cover AGC too: "**T56 LWS Splx 540 → SEE with → PB SGV <u>560</u> → exits from the game PB <u>550</u> → <u>560</u> will be extruded T56 for Splintex?? to be seen*".[392]

(191) In its written response to the Statement of Objections[393] Pilkington points out that it was not party to the contact of 30 September 1999. It is clear from […] the notes and […] that the possible agreement reached by AGC and Saint-Gobain had still to be checked with Pilkington. Therefore, according to Pilkington, there is direct evidence that Pilkington was not

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389 See […]. The original French text reads as follows: «**PBF Mégane Ath.: saturé Prix 440 à 450 si il y avait des capacités*».

390 See […]. The original French text reads as follows: "**PAR J64 → répondre: on devrait augmenter mais pour avoir 100% le prix reste ~~37~~ le prix actuel. on joue la saturation pour garder nos parts de marché* (…)"

391 "*T52 LAC verre nu 155 x splx SG couvre PB à voir*" in the original French. See page 11538 of the file.

392 See […].The original French reads as follows: "*T56 PBF Splx 540 → VOIR avec → PB SGV <u>560</u> → sort du jeu PB <u>550</u> → <u>560</u> sera extrudé T56 pour Splintex ?? à voir* ".

393 See page 90 of Pilkington's response to the Statement of Objections.

party to any alleged proposal. Even in the event that an agreement was closed during this contact, Pilkington could not agree on anything.

(192) The Commission points out that the Statement of Objections clearly stated that Pilkington was not present in this contact. However, in the Commission's view, it is clear from the handwritten notes of Mr […] that AGC intended to contact Mr […] of Pilkington to check that Pilkington would cover AGC too. Pilkington was actually contacted by Saint-Gobain, as can be seen in recital (194), and Pilkington confirmed that it was not interested to get this contract at that price.

(193) On 26 October 1999, Mr […] of AGC called Mr […] of Saint-Gobain in connection with AGC's response to the RFQ for the Peugeot 307 coupé convertible (windscreen and sidelights) to exchange price information for various glass parts (front door 'PAV', quarter light 'PAV', laminated windscreen 'PBF' as well as for extrusion). Notes of the conversation were made at the bottom of an internal e-mail dated 25 October 1999.[394]

(194) On 2 November 1999, Mr […] had a contact with Mr […] of Saint-Gobain,[395] during which they exchanged price information in relation to the laminated windscreen (PBF or Parebrise feuilleté), the sidelight (PAV or porte avant), and the quarter light (cust or custode) of the Peugeot 307 coupé convertible.[396] In addition, Pilkington informed AGC that it was not interested in obtaining the supply for the T56 and that it therefore "covered" for AGC for all the glass parts ('carset'): "**T56 already submitted Laminated Windshield 330+245 + extr 71 PAV 70 QL 48 without preassembling I don't want those prices. I cover you very well on car set*".[397]

(195) In the written response to the Statement of Objections[398] Pilkington observed that the fact the Mr […] indicated Pilkington's intention to 'cover'

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394 See […]. (Saint-Gobain is referred to as "1" and Pilkington is referred to as "2" referred to in the circles)

	"*PB*	*SGV*	*SPLX*	*26.10.99*	
PAV	*70 ~~62 à 63~~*	*65*	*72*		
CUST	*pas côté*	*48+66.80*	*137*		** 1x10⁶*
		*= 115**			*outill.*
					en plus
PBF	*335+225*	*330+*			
	560	*570*	*542*		
extr.	*62*	*60*	*90?*".		

395 As explained in footnote 353, Mr […] referred to Mr […] as […]. Furthermore, he referred to "F" (France) for Saint-Gobain and to "I" (Italy) for Pilkington or to Mr […] of Pilkington as "[…]", see e.g. p. 18638.

396 See […].

397 See […]. The original French text reads as follows: "**T56 déjà envoyé PBF 330+245 + extr 71 PAV 70 cust 48 sans prémontage Je ne veut pas ses prix là Je vous couvre très bien sur car set* ".

398 See page 91 of Pilkington's response to the Statement of Objections.

AGC is at odds with the indication in Mr […] notes that Mr […] informed Mr […] that Pilkington had already submitted its quote "*T56 déjà envoyé*"). However, Pilkington admitted that these notes recorded an indication given by Pilkington that it was not interested in obtaining the contract and therefore did not compete seriously for the business.

(196) The Commission does not share Pilkington's explanation of the facts. In the same relevant page of the file[399] it can be read that Mr […] promised to Mr […] to cover AGC in this bid, as reported in recital (194): "*I cover you very well on car set*". This does not mean that Pilkington decided independently not to compete for the business, but it was the result of an agreement concluded with AGC. The fact that the price did not seem to be particularly appealing in Pilkington's opinion can only be seen as a possibly internal assessment of the business which eventually could have facilitated the 'covering' agreement with AGC.

(197) On 11 November 1999, Mr […] had a contact with Mr […] of Saint-Gobain during which they exchanged price information in relation to the Renault Mégane (the W84) for which the competitors intended to increase prices: "* *W84: try to increase prices because it would be good*"[400]. On 10 December 1999, Mr […] had an internal discussion with his […], Mr […] of Splintex at the time. As can be seen from the notes of Mr […], Mr […] informed him that there was going to be a high-level contact with competitors ("*a high level contact*") regarding the new Renault Mégane. If AGC did not obtain the supply for this model, it should increase their market share by 3 or 4 percentage points on the upcoming contracts with Peugeot[401].

(198) According to a document copied by the Commission and dated 17 December 1999, Glaverbel France SA addressed on behalf of AGC a document to two employees from Sogedac, which is the sales department of Peugeot,[402] containing the response of AGC (Mr […] and Mrs […]) to Peugeot in relation to its productivity. Sogedac had previously asked AGC for a reduction in line with productivity gains of […] from 15 January 2000, of […] from 1 April 2000 and of […] from 1 July 2000. Pages 1 to 5 contain proposals of reduction of prices in this respect for glass parts for several Peugeot/Citroën models. Handwritten notes on pages 6 to 8, however, refer to an exchange of information with AGC's competitors Saint-Gobain and Pilkington. From the handwritten notes on page 6 it can be seen how the competitors intended to share the supply for Xantia, the

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399 See […].

400 See […]. "* *W84: essai de relever les prix car il serait bien*" in the original French.

401 "*(...)* • *3 à 4 points dans les années qui viennent en Europe* • *On ne peut pas aller encore plus bas que S.* [Saint-Gobain] *donc on va remettre notre prix en ligne avec les prix des PBF* [laminated windscreen] *à couches et autres pièces. Il y aura un contact à haut niveau ~~mais~~ car il y a faute grave (prix en baisse sur des nouvelles fonctions), mais sans beaucoup d'espoire. On se rattrappera sur* ***PSA*** *et* [arrow pointing to the 3 to 4 points of market share under second bullet point]". See […]. It is not specified who the high level contact was/were but it can be presumed that Mr […], the then […] of AGC, would contact his counterparts Mr […], Mr […] of Saint-Gobain and Mr […], Mr […] of Pilkington as was frequently the case, see […].

402 The purchase department of Peugeot is called Sogedac, Société générale d'achat, see […].

X4, the Citroën C3 (code reference A8) and the 106/Saxo models.[403] In addition, pages 7 and 8 of this document contain handwritten annotations in the margin which are those of Mrs […] on the occasion of a conversation with Mr […]. From these notes it can be seen that Saint-Gobain, Pilkington and AGC exchanged pricing, technical and other commercially sensitive information in relation to sales to Peugeot.[404] In particular, page 8 of this document contains more handwritten notes from which it can be seen that an exchange of pricing information had taken place between AGC (referred to as "2"), Saint-Gobain (referred to as "1") and Pilkington (referred to as "3") for the Saxo/106 and the Berlingo (the M49) windscreens and the heated rear windows for the 206 and the 406 models.[405]

(199) In the written response to the Statement of Objections[406] Pilkington argued that there is no objective basis for concluding that the notes show an agreed intention to share supply in relation to the vehicles mentioned. In any event, the information […] is not corroborated by any other source.

(200) In response to Pilkington's argument the Commission observes that nowhere in the Statement of Objections is it written that the notes show an "agreed intention" by the competitors to share supply contracts. Rather the Commission notes that it results from the handwritten notes that the competitors intended, saying that they had the intention, to share the supply contracts and for this reason they exchanged a large quantity of confidential information, including prices (for example concerning the heated rear windows for the Peugeot 206 and volumes (for instance for the 206 3-door model). As will be explained more in detail in section 5.3.2.1, for there to be an agreement, it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way. For these reasons, the Commission maintains the conclusions drawn in the Statement of Objections relating to this contact.

4.4.3. 2000

4.4.3.1. Summary

(201) In 2000, there were 13 trilateral meetings between Pilkington, Saint-Gobain and AGC. Furthermore, two bilateral meetings between Saint-Gobain and AGC and one meeting between Pilkington and AGC took place. In detail, trilateral meetings took place on 12 April, twice in mid 2000, on 5 July, 28 July, 31 July, 19 September, 27 October, Autumn 2000, late October/early November, 1 November, 9 November and 13-14 December. Saint-Gobain and AGC also met bilaterally in July-September. Another bilateral meeting took place between Pilkington and AGC prior to 23 June. In relation to contacts, Saint-Gobain had a contact with Pilkington and AGC at the end of the year. Saint-Gobain also had seven contacts with

403 See document labelled EF12, pages 35572-79, see also […].

404 Document labelled EF12, p.7, page 35578 of the file, see also […]. As already explained above in section 4.2.5, Mr […] used the following numbering to refer to AGC competitors: 1 for Saint-Gobain, 2 for AGC and 3 for Pilkington.

405 See document labelled EF12 p. 8, p. 690, see also […]. […]

406 See page 85 of Pilkington's response to the Statement of Objections.

AGC on 13 January, 21 July, late August/early September, late September, Autumn 2000, 11-25 October, end October / beginning November. Finally, Pilkington and AGC contacted each other six times prior to 23 June, on 23 June, in mid 2000, on 17 July, in November and on 5 November.

(202) During these meetings and contacts, the competitors exchanged price information as well as other commercially sensitive information with a view to allocating supplies to the following customers: PSA (5 July, 28 July, 19 September, between 11 and 25 October, 1 November and two other times in Autumn 2000), Renault/Nissan (for Renault: meeting mid-2000, then on 5 July, 28 July, between 11 and 25 October and on 1 November; Nissan was discussed on 12 April, during the contacts between 11 and 25 October and on 1 November), BMW (prior to the contact of 23 June, then on 23 June, 21 July, 2 August, some time in late August or early September, 27 October and 5 November), Volkswagen (in early January 2000, in June, in mid-2000, in summer 2000, in late September, on 27 October, during various telephone calls between 31 October and 8 November and on 13 or 14 December), DaimlerChrysler (above all Mercedes, on 27 October, in November and towards the end of the year), General Motors (31 July), Fiat (contact prior to mid-2000, on 31 July and 9 November), Honda (contact prior to 23 June 2000, on 23 June and 17 July, between 11 and 25 October, on 1 November and in late October/early November), Toyota (on 23 June and 17 July) and Mitsubishi (on 13 or 14 December).

4.4.3.2. Chronological description of the contacts

(203) A handwritten document dated 13 January 2000, which was copied at the premises of AGC, illustrates how Saint-Gobain and AGC managed the sharing of the backlight of the VW Polo 04 between each other: "*We* [AGC] *let backlite to SGV*"[407]. Discussions among competitors as to the allocation of supply for the new Polo A4 were then resumed during a meeting in June (see recital (222) et seq. for the other vehicles discussed).[408] […], Pilkington prices were juxtaposed to AGC ones. Pilkington was apparently "*very happy*" with the prices.

(204) Pilkington contested in its written response to the Statement of Objections[409] that these discussions involved Pilkington at all. In relation to the resumption of discussions in June on VW Polo, Pilkington noted that there is no proof that the pricing data present on the note refer to Pilkington and AGC has not stated this. Furthermore, Pilkington cast doubts on the model this pricing data would refer to and forms the hypothesis that the prices refer to the current Polo model, for which it was not a supplier.

(205) The Commission notes that Pilkington was involved in the discussions in June and from the face of the document it can be seen that there are several comments referred to Pilkington, for instance regarding BMW, Renault and in relation to the reduction of fixed costs, which makes it plausible that a

407 See document labelled EF13, p. 693-694. […].

408 See […].

409 See page 144 of Pilkington's response to the Statement of Objections.

representative of Pilkington was party to the contact and conveyed this information to the other competitors present. For these reasons Pilkington's arguments cannot be accepted.

(206) According to a document copied by the Commission, the three major competitors met on 12 April 2000 at a hotel at the Charles de Gaulle Airport outside Paris; the participants were likely to have been Mr […] (Saint-Gobain), Mr […] and Mr […] (Pilkington) and Mr […] (AGC).[410] The purpose of this meeting was to exchange information on future quotes to be made for the Nissan Micra model and its upcoming bid, referred to as the "NM" (code name for that model), with the intention to agree on the allocation for the supply of parts for the Nissan Micra model. Price information such as assembly costs, piece costs and tooling costs as well as Nissan's target prices were compared between the three as can be seen from the handwritten notes by Mr […].[411]

(207) The price comparison was made for the front windscreen; the front door for the Nissan Micra 5D model (D stands for door); the front door 3D; the rear door 5D; the quarter light 3D and the rear fixed 5D. The three competitors agreed that Pilkington should win the bid for the Nissan Micra and that Saint-Gobain and AGC should submit higher quotes to the customer. It can be noted that Pilkington, since the start of production in November 2002, has supplied 100% of the Nissan Micra 5D and 3D[412], in accordance with what was agreed at this meeting between the three competitors. The headings of the handwritten notes refer to each particular glass part and the exchanges of information in relation to these parts for the Nissan Micra model.[413]

(208) The last section of Mr […] notes illustrates how Pilkington, AGC and Saint-Gobain exchanged information in relation to Nissan's revival plan proposals so as to co-ordinate their responses to Nissan. Nissan was proposing that glass suppliers come to a […] price reduction over […] years to try to redress its economic situation. The suppliers therefore exchanged information regarding particular price reductions in view of the responses each of them were to provide to their customer Nissan. Saint-Gobain intended to offer a […] and proposed to implement that reduction via so-called "value engineered" (VE) proposals. Since Saint-Gobain expected that not all of its proposals would be accepted, it estimated that its actual price reduction would amount to […] annually. Pilkington intended to offer […] for the 3 years, in part also via VE proposals, and AGC

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410 It can be seen from a document seized at the premises of AGC in Seneffe that Mr […] of AGC had written down the phone contact details of his counter parts in Saint-Gobain and Pilkington as follows: "*[...]*. […] *[...]*. *[...]* [Mr *[...]* of Pilkington] *[...].[...]* [Mr *[...]* of Pilkington] = *[...]*. *[...]*". This document was in the same folder as the handwritten notes having the same content but dated 14/2/2000. See document labelled SM25, file 5, p. 1312. See also response of […] to question 26 of Article 18 letter sent on 8/5/2006, see annex 11, p. 45562 and 45702. See also […].

411 See document labelled SM25, p. 1312.

412 See Pilkington's response to the request for information of 7 April 2006, file 81, annex 7, p. 23742-23749, p. 40399-40406.

413 See document labelled SM23, p. 1289 to 1310. See […].

intended to propose […] for the […] years, that is […] the first year and then […] in […] remaining years.[414]

(209) In its written response to the Statement of Objections Pilkington did not deny its participation in this meeting and admitted that the notes "*appear to evidence a detailed exchange of data in relation to the Nissan Micra*"[415]. Pilkington, however, claims that there is no evidence of an agreement and that, on the contrary, Pilkington was awarded the contract as a result of an undistorted bidding process.

(210) The Commission reiterates its position that a joint intention is sufficient for there to be an agreement and refers to section 5.3.2.1 and to the case-law cited therein. Moreover, it is clear from the relevant notes that AGC and Saint-Gobain intended to quote higher prices so as to give Pilkington a free hand. Therefore the Commission does not accept Pilkington's reasoning and maintains its conclusions as set out in the Statement of Objections.

(211) In mid-2000, an exchange of prices between Pilkington and AGC took place regarding the Seat MPV, i.e. the Alhambra.[416] The notes of Mr […] related to this meeting read as follows:

"↳*Agree with* […] [Mr […] of Saint-Gobain] + […] + *SPX to share MPV between PB* [Pilkington] + *SPX* [AGC].

↳*Accepted by SGV* [Saint-Gobain].

↳*Confirmed by PB* [Pilkington] + *SPX* [AGC]."[417]

(212) The notes taken during that exchange are in form of a table which lists the prices for the different parts of the Alhambra by AGC, the tooling costs, the ideal price in euros for each relevant part and the price AGC would quote to the customer[418].

(213) […] the idea was for Pilkington to obtain the orders for the front part of the Seat MPV and for AGC to obtain the back parts. The last column in the final three lines therefore shows AGC starting prices. Competitors were intended to offer prices above these.

(214) It is noted that discussions on the Seat MPV were resumed in late September 2000 in a telephone call. […] Saint-Gobain provided AGC with prices that Pilkington offered to Seat for each relevant part on that model, in other words for the windscreen, the backlights, the front door, the rear door and the triangular fix. The notes juxtapose these prices with AGC' prices for the relevant parts of the model.

414 See document labelled SM23, p. 1289 to 1310. See […].
415 See page 116 of Pilkington's response to the Statement of Objections.
416 See […].
417 See […].
418 See […].

(215) In its written response to the Statement of Objections Pilkington admitted, in relation to the contacts referred to Seat that "*the content of the conversation recorded on those pages is (...) not open to dispute*"[419]. **[…]**

(216) Pilkington, however, […]. In any event, the supply contract was eventually awarded not in accordance with the agreement[420].

(217) Pilkington argued that whatever arrangement might have been reached in mid-2000, it had been abandoned by early 2001, as can be seen from the notes of the contact in January 2001 (see also recital (304)).

(218) The Commission notes that Pilkington did not deny its presence in this meeting or the fact that an agreement was reached on this occasion regarding the Seat MPV model. According to case-law, it is not necessary for the Commission to show that the agreement reached at this meeting and admitted by Pilkington was implemented for there being an infringement of Article 81 of the Treaty. For these reasons, and in view of Pilkington's admission and of the non contestation of the facts by the other participants, the Commission confirms its conclusions as set out in the Statement of Objections.

(219) A contact took place between Mr […] of AGC and Mr […] of Pilkington sometime prior to 23 June 2000[421] in relation to the Honda account during which prices were exchanged in order to know how they could "cover" each other for Honda Logo model. The notes contain a table which list for all glass pieces of the Logo the prices of the Big Three, the "*Tooling + packaging extra*".[422] […] the information on Saint-Gobain was provided by Mr […].[423] At that meeting Pilkington also provided its market share overview for the Honda account of the Big Three for the period 1998 to 2003 and its own target share for two specific models, the Logo and the CRV.

(220) In its written response to the Statement of Objections[424] Pilkington submitted that the evidence relied on by the Commission did not reach the requisite standard of proof and therefore cannot support the Commission's conclusions. Pilkington contends that the allegation that Pilkington supplied Saint-Gobain data is pure speculation. As to the content of the talks, Pilkington submits that it is not possible that the discussion involved the Honda Logo, since the model was produced between 1996 and 2001 and at the time of the contact it was approaching the end of production. No RFQ was therefore on foot. According to Pilkington, if the Commission wished to allege that these discussions involved some other Honda model, it is incumbent to the Commission to identify that vehicle and to show the unlawful purposes of the discussions.

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419 See See pages 149-50 of Pilkington's written response to the Statement of Objections. The statement at stake refers in particular to the two contacts recorded in paragraphs 222-227 of the Statement of Objections and reported in this Decision in recital (211) et seq.

420 See page 151 of Pilkington's written response to the Statement of Objections.

421 See […].

422 See […].

423 See […].

424 See pages 180-181 of Pilkington's response to the Statement of Objections.

(221) The Commission observes in relation to this meeting that Pilkington has not denied that it was party to this contact. It may be that the discussions involved other non identified models as well. However, it remains clear that an exchange of sensitive information occurred at this meeting and that Pilkington provided its market share overview on the Honda account. The statement of the undertaking that the supply of data by Pilkington is pure speculation is not underpinned by any other plausible explanation for the presence of these data. The Commission, therefore, maintains its conclusions on the unlawful nature of this contact.

(222) During a meeting sometime prior to the contact which took place between competitors on 23 June 2000, Pilkington and AGC exchanged prices in order to allocate supply for the new BMW 5 series, for which production started in 2003.[425] […] the figures written down at that meeting represent prices for the current model as well as prices proposed by Pilkington for the new model. In the notes it reads: "*FD BMW 5 9.72€ 6.75€ 4.83* [which is the price of the rear door sidelight] *BMW 5 FD Q-393 BF ≈ 9.72€*". Some explanations can be derived from the notes themselves, for instance that EUR 6.75 was the price of the current front door, while EUR 4.80 (or EUR 4.83 depending on the exchange rate) was the current rear door price.

(223) The windscreens of the then current BMW 5 sedan (E39) series were supplied by AGC and the sidelights, i.e. the front and rear door, by Pilkington and the backlights by Saint-Gobain.[426] As was the case for other models the Big three intended to keep the split of the current model also for the new one. Accordingly, the intention was that Pilkington should be awarded the sidelights and therefore Pilkington communicated their intended price for the sidelights of the new model to AGC in order to allow AGC to "cover", i.e. to quote higher prices than Pilkington.[427]

(224) In its written response to the Statement of Objections[428] Pilkington pointed out that it is not accurate to allege that Pilkington and AGC exchanged data "*in order to allocate supply*". Nothing came of any of the discussions which took place in relation to the BMW account, since BMW awarded nothing to Pilkington on the models concerned.

(225) The Commission responds that it is apparent from the notes that the two competitors exchanged several pieces of information, including prices, not only related to the current models, but also to new BMW 5 series. As to the discussions on allocation, […] it was intended that the same split existing for the current models had to be replicated for the new one. To this end, Pilkington communicated their intended prices for the sidelights – front and rear door – of the new model (to be seen on the top left of page 49 of Mr […] notes after the current prices) in order to allow AGC to "cover" Pilkington. The explanation […] is plausible in view of the overall body of evidence and of the framework in which the notes referred to here fit. The

425 See […].
426 See […] Article 18 response of 24 February 2006, annex A2, p. 13929.
427 See […].
428 See p. 158 of Pilkington's response to the Statement of Objections.

Commission therefore maintains its conclusions as set out in the Statement of Objections in relation to this contact.

(226) During the contacts prior to and on 23 June 2000 as well as on 17 July 2000 Mr […] of AGC and Mr […] of Pilkington[429] intended to agree on how the new Toyota Avensis model would be shared between the competitors, in particular the windscreen ("*if new* Avensis *W/S is no split between SGV* [Saint-Gobain] + *PB* [Pilkington] *then SPX* [Splintex = AGC] *should give up something to SGV*").[430] […], the information from Saint-Gobain was provided by Pilkington.

(227) Moreover, on 23 June and 17 July 2000 Mr […] of AGC and Mr […] of Pilkington[431] discussed the Honda account. Saint-Gobain, who was not supposed to supply any parts on the Honda CRV, was to 'cover' Pilkington and AGC. Pilkington was in turn to "cover" AGC except for the quarter and back lights ("QL" and "BL") as can be seen from the notes ("*PB to cover all but QL + BL")*.[432] These notes furthermore indicate that in the event that Pilkington did not get the business for the quarter lights, the intention was that it should then receive some other parts as compensation, for example the rear doors ("*if QL not possible due to SPX low price then they will take something else ≈ RD*").[433]

(228) In its written response to the Statement of Objections[434] Pilkington submits that the competitors only "intended" to agree, that is to say that no actual agreement or understanding was reached at this meeting. At most, the note reports a statement of desire supposedly made by Saint-Gobain as to how AGC should agree to behave if Toyota did not allocate the contracts as wished by the competitors.

(229) The Commission observes that the simple fact that an attempt to reach an agreement was made during an ongoing collusion is unlawful by nature and therefore it does not change its opinion on this meeting. It is noted again that the simple joint intention to behave in a certain way is considered unlawful by the case-law. The Commission refers to section 5.3.2.1 and to the case-law cited therein.

(230) On 5 July 2000, a trilateral meeting between Saint-Gobain, Pilkington and AGC took place at either the Sheraton Hotel at the Charles de Gaulle Airport outside Paris or at the premises of the association FIV in Rome. At this meeting the competitors exchanged price information and agreed to coordinate their prices for the Peugeot 307 model (code reference T5).[435] According to the notes taken by Mr […], AGC asked to increase their production for the windscreen of the 307 and that their price would be FRF 550 minimum. Saint-Gobain and Pilkington intended to increase their

429 See […].
430 See […].
431 See […].
432 See […].
433 See […].
434 See pages 183-184 of Pilkington's response to the Statement of Objections.
435 See […].

prices above this price by FRF 40-50 per item. […], this is an illustration of a compensation mechanism for the purposes of "market share freezing".[436]

(231) The competitors also exchanged price information for the Renault Scénic model (SOP January 2003). With regard to other Renault models, namely the Clio, the Twingo 3-door, the Modus, the Mégane and the Laguna, the competitors envisaged the sharing of supply between each other. For instance, a part of these notes reads as follows:

"*Clio 85* [code name of the model] *40%* → *SPX + SGV*

Twingo 77 → *SPX*

Twingo 89 *Ø* → *PB*

Mégane 84BKL J 60% → *SPX – SGV – PB*

Laguna 74 *Ø* → *SGV – PB*"[437].

(232) In its written response to the Statement of Objections[438] Pilkington observed that […] is neither reliable nor corroborated by any other evidence. AGC is not even able to name any alleged attendees from Pilkington and Saint-Gobain. Furthermore, this meeting has been recalled as such […] only at a very late stage of the procedure and was not mentioned […] notes related to this meeting were only believed to record "discussion topics". However, Pilkington does not deny that this meeting took place and that Pilkington was present.

(233) The Commission disagrees. Firstly, the Commission points out that, in its response, Pilkington cites a non-existing […]. From the file pages referred to, it is nevertheless believed that the reference is made to […]. […] the Commission considers that […]. The fact that the meeting has not been recollected before does not imply that the statement […] is not credible or simply not true. It is noted that […] it therefore was not necessarily complete. Secondly, Pilkington contests the interpretation given by the Commission of the relevant minutes. In particular, the Commission's interpretation of the sentence "*SGV+PB can increase the price by 40-50 FF/piece*", namely that Saint-Gobain and Pilkington were to increase their prices above this price by FRF 40-50 per item, is, in Pilkington's opinion, not correct and should instead be read as evidence of "*a possible indication by Pilkington and Saint-Gobain that they would be willing to consider this course*"[439]. The Commission does not see in this nuance a real difference between the ability to implement the price increase of the carglass piece in question ("were to increase") and the fact that both companies were inclined to do so or at the very least to consider it ("can increase") as a contemporaneous and concerted manner. Finally, while Pilkington takes the trouble to state precisely certain model names, it does not comment on the pricing information exchanged concerning e.g. the Scénic model, it just ignores Commission's comments and limits itself to stating that certain

436 See […].

437 See […].

438 See pages 91-92 of Pilkington's response to the Statement of Objections, which refers to […].

439 See page 92 of Pilkington's response to the statement of objections.

quotations, even if self-explanatory, are not exhaustively explained[440]. The Commission does not consider this to be a valid rebuttal and therefore does not change its conclusions on the nature of this meeting.

(234) The discussions between Saint-Gobain and AGC on how to allocate the BMW 5 series and the 6 series, that is to say, the Cabrio and Coupé-version of the 5 series, for which production had started in June (see recitals (222)-(223)), were resumed on 21 July 2000[441]. The competitors agreed on a split of the new models (code names E60, E63 and E64). The intention was that AGC should supply the windscreens of the E60 model, Saint-Gobain and AGC jointly the backlights and Pilkington mainly the sidelights. Furthermore, Big three's intention was that AGC should also supply the remainder of the sidelights on this model.

(235) During this contact the two competitors also discussed a possible price increase to offset increased energy costs, in particular oil prices[442]. The notes by Mr **[…]** reflect the reasons why a price increase was justified and mention the three major relevant aspects in this regard. In addition to energy, oil and increased transport costs, due to increased prices for diesel fuel, it refers to PVB (and PVB is an interlayer on the windscreen), the production costs of which are heavily influenced by increased oil prices. The next paragraph starting with "*orchestrated efforts*" emphasized the need for common action between the suppliers. As can be seen from the notes, Saint-Gobain and AGC agreed on price increases for specific accounts in light of the increased energy costs, on the GM, Fiat and BMW accounts but not in relation to the PSA and Renault accounts.[443]

(236) On 28 July 2000, a trilateral meeting took place in Paris between Mr […] of Saint-Gobain, Mr […] of Pilkington and Mr […] of AGC[444]. At this meeting the competitors first made an outline of the current supply situation for both the Peugeot and Renault accounts and then agreed on allocation of the coated windscreen of the Peugeot 206 model, whereby AGC wanted to increase its share while Saint-Gobain [X] was to increase its price to make this shift possible (*206 W/S Coated SPX* [Splintex = AGC] ↑ *coated ∴ ↓ Green X ↑ on price ≈ 5 - 10 FF with ↑↑↑ Dev. Cost*).

(237) At this meeting, the Big three exchanged price information and other commercially sensitive information with a view to sharing the PSA account, in particular the following models: the 106/Saxo; the 206, the C3 Pluriel (code reference A42); the 307 (code reference T5); the C2 (code reference A6); and the 306 between each other. For instance, Saint-Gobain wanted to take the A6 project, otherwise, their share would drop to 45% of supplies to PSA. The notes also illustrate how the competitors intended to compensate each other for losses that might occur due to AGC taking 100 000 windscreens in 2000 for the 106 and Saxo ("*106/Saxo SPX has*

440 See page 120 of Pilkington's response to the statement of objections.
441 See […].
442 See […].
443 See […].
444 See […].

taken ≈ 100K W/S in 2000; X [Saint-Gobain], *Y* [Pilkington] *are worried about this and may need compensation. Y would like to take 30-40K W/S for replacement Market*").[445] […], the phrase "*206 SPX will delay the BL up to Sept/Oct 00. ramp up should be OK, but can demonstrate difficulty*"[446] is an example of how one supplier, in the instance AGC, delayed deliberately production in order to allow a competitor to sell its product.

(238) The competitors also exchanged price information including in particular intended price levels and other customer sensitive information for the Renault and PSA accounts. According to the notes, it was agreed that price levels should be maintained for 2001 or at least price reduction should not exceed 0.2-0.3% ("*maintain price level for 2001 or to ~~keep~~ give about 0.2 → 0.3 %*").[447] AGC informed its competitors that it would like to get 100% of the Clio successor model, whereas Pilkington informed the others of a price increase on the Laguna model.[448] The competitors also exchanged price information in relation to the Dacia Logan and the Renault Scénic (code reference J84)[449] and agreed, likewise PSA, on maintaining the current price level or at least not to reduce by more than 0.2-0.3%.

(239) At the same trilateral meeting the three suppliers agreed that PSA should pay cash for all tooling costs ("*TOOLING PSA: must pay for all tooling in cash XYZ agree*").[450]

(240) Moreover, Pilkington informed the others of details on the increased prices it intended to charge for the laminated sidelights on the Renault Laguna model (code reference X74).[451]

(241) In its written response to the Statement of Objections[452] Pilkington did not deny its presence at the meeting of 28 July 2000 and accepted that the relevant notes on this point refer to pricing to Renault and Peugeot generally. While denying that an outright agreement occurred at this meeting, Pilkington however concedes that the description of the meeting, based upon the handwritten notes of Mr […], correctly shows a mutually expressed intention among the parties to seek a sharing-out agreement, including possible compensation between different customers and models. Pilkington nevertheless argued that the notes relating to the meeting evidence "*only expressions of desire, with a view to negotiating possible agreed courses of action, which in practice do not appear to have been settled upon*"[453] and repeated that again the agreement on maintaining certain price levels did not yield any result in practice as, according to Pilkington, the price reductions granted by Pilkington to Peugeot in 2001 were well in excess of 1 per cent. Finally, Pilkington reproaches the

445 See […].
446 See […].
447 See […].
448 See […].
449 See […].
450 See […].
451 See […].
452 See pages 121-22 of Pilkington's response to the Statement of Objections.
453 See page 94 of Pilkington's response to the Statement of Objections.

Commission for not having particularised how the discussions described were intended to induce a sharing of supply in relation to any of the vehicles in question other than the Citroën C2 model.

(242) The Commission points out, firstly, that Pilkington has admitted its participation in the meeting and that it indeed was taking part in the discussions while contending that the discussions did not concretise in an outright sharing agreement. Secondly, Pilkington reproaches the Commission for having only cited the Citroën C2 when describing the sharing-out discussions. It is, however, noted that the model in question only was used as an example, since discussions of the type described for the C2 model also involved other models cited, as can be seen in the minutes of the meeting (as well as in the annotations under the Dacia Logan model) and as set out in the Statement of Objections. It is believed that for the models indicated in the minutes commercially sensitive information concerning tooling, prototype, development and options costs was exchanged with a view to fixing a minimum price which could allow both recovering of costs and avoidance of losses. Compensation was also discussed, for example regarding the losses for the other competitors due to AGC taking 100 000 windscreens for the PSA models 106 and Saxo in 2000. The issues described in recitals (236) to (240) and discussed at this meeting have notably not been contested by Pilkington. The Commission notes that they fall under the practices prohibited by nature by Article 81 of the Treaty and therefore maintains its conclusions on the unlawful nature of this meeting as set out in the Statement of Objections.

(243) On 31 July 2000 a trilateral meeting took place between Mr […] of Pilkington, Mr […] of AGC and Mr […] and Mr […] of Saint-Gobain at the Charles de Gaulle airport Sheraton Hotel outside Paris.[454] The purpose of this meeting was to discuss the intended price increases for the Fiat/GM account and also to share out contracts for the Fiat Multipla model. In relation to GM, the competitors exchanged information on prices for the Astra. Pilkington's prices on the Astra model were higher than on the comparable Fiat model and as a result of this disparity, GM had communicated to Pilkington that it wanted a price reduction of 15% on the Astra model ("*Astra prices are very high compared to Fiat + GM wants a 15% reduction*"). Pilkington therefore communicated to AGC that it was not happy with this development. It was therefore agreed to adopt a joint strategy vis-à-vis GM ("*We remain with the current price level*").[455]

(244) The purpose of this meeting was also to discuss the intended price increases for the Fiat/GM account and also to share out contracts for the Fiat Multipla model. Regarding the Multipla, the phrase "*no capacity for X, Y*" refers to the fact that it was agreed that both Pilkington and Saint-Gobain should refuse to quote on the Multipla. As a reason for not quoting, both Pilkington and Saint-Gobain agreed to mention that they had no capacity available to take on any additional business. It was also agreed

454 See […].
455 See […].

that AGC would not quote for the Lancia Lybra by claiming lack of capacity.[456]

(245) In its written response to the Statement of Objections Pilkington contests […]. In particular Pilkington considers that the Commission could not rely itself on page 55 of […] notes which […] are only "*believed to be a record of such a contact*"[457] (emphasis added by Pilkington). In the event that the notes record a trilateral contact, there is, according to Pilkington, still no basis to link the disclosure on Astra to the actions agreed between AGC and Pilkington to react to GM's request for reduction.

(246) In reply to this argument the Commission notes that […][458]. Therefore there is no doubt about the date and the place of this meeting. Also, the link between the first and the second part of the notes is clear as in the first part the current situation is analysed (including GM) and the second part bears the abbreviation GM, meaning that these were the possible reaction agreed vis-à-vis GM's requests. In addition to that, the relevant notes of Mr […] are not vague, but clearly indicating that the competitors would not change their pricing strategy and that, regarding notably Astra, Pilkington was not satisfied with the developments vis-à-vis GM. It is the Commission's view that this is an unambiguous record of an understanding to coordinate pricing action in relation to GM, as clearly showed by the notes and even admitted by Pilkington in its written observations: "*Pilkington accepts that if the Commission could properly conclude that this is a record of a discussion between the parties (...), it does appear to record some of understanding to co-ordinate pricing action in relation to GM, albeit one in very general terms*"[459]. In relation to FIAT the notes are also often self-explanatory, for instance when indicating the 'no-capacity' strategy to communicate to the car manufacturer in question. The Commission has therefore clearly demonstrated that the notes record an unlawful discussion between the competitors and, as a consequence, does not change its opinion on the nature of this meeting.

(247) A meeting took place in Paris in mid-2000, in connection with the request for quotation for the Renault Mégane model for which AGC submitted an RFQ on 13 June 2000. […] participants in this meeting were representatives of Saint-Gobain, Pilkington and AGC. According to the notes, the competitors were to split the Mégane Monospace (Scénic) model (code name J84) between each other as Pilkington was to quote higher than AGC, in other words 'cover' on the J84 model ("*J84 cover by Pilk*").[460]

(248) In its written response to the Statement of Objections[461] Pilkington, despite not denying its participation in this meeting, did argue that the nature of the

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456 See […].

457 See page 176 of Pilkington's response to the Statement of Objections.

458 See […].

459 See pages 176-7 of Pilkington's response to the Statement of Objections.

460 See […]. See AGC's Article 18 reply for Renault J84, the Mégane II Scenic, file 182, p. 49764, Art. 18 reply from Saint-Gobain of 6 July 2006, supplementary reply for question 14 for actual split, p. 35410. This model has been in production since January 2003 and the sourcing is multiple (Saint-Gobain 100% WS).

461 See page 119 of Pilkington's response to the Statement of Objections.

evidence […] and of the explanations does not support a claim that any actual agreement or understanding was reached at this meeting.

(249) It is, however, noted that the Commission stated in the Statement of Objections that at this meeting the competitors exchanged sensitive pricing information in relation to the behaviour they were going to adopt for that particular bid, namely for the Scénic Mégane (J84) model. It was never stated in the Statement of Objections in relation to this meeting that the competitors reached an agreement or understanding, as the Statement of Objections only reported onthe exchange of information with a view to sharing the supply for this model, which clearly occurred and which is not denied by Pilkington.

(250) At a meeting in the summer of 2000, most likely July-September, in Brussels, several models of VW were discussed and arrangements reached between Saint-Gobain and AGC. First, the competitors exchanged prices and other sensitive information of the then current Passat model (code name B5). AGC, in these exchanges, stated that it would ask to recover volumes, which could mean that Saint-Gobain would lose something ("*SPX will ask to recover volumes* ≈ […]*%, SGV could lose business*"). Saint-Gobain was apparently satisfied with the price for the B5 glazing which was however not the case for AGC ("*Passat B5 price is good for X 51.81 DM - not satisfactory for SPX*"). Second, with regard to the new Golf (code name A5), the two competitors exchanged sensitive information on pricing and tooling costs and expressed the intention not to under-quote for the prototype.[462]

(251) In late August or early September 2000 the allocation of the contracts for the new BMW 5 series (E 60) was further discussed during a telephone call between Saint-Gobain and AGC.[463] […] the notes taken of that call contain prices provided by Saint-Gobain which Saint-Gobain intended to quote. The notes taken concern in particular the pricing for the backlight. It was agreed among the suppliers that Saint-Gobain should supply at least parts of the backlight on the new 5 series, as Saint-Gobain was the incumbent supplier of this part on the current model. These prices were given to AGC by Mr […] and the relevant Saint-Gobain *[employee]*.[464]

(252) On 19 September 2000 a trilateral meeting took place at the Charles de Gaulle airport Sheraton Hotel outside Paris between Mr […] of Saint-Gobain, Mr […] of Pilkington and Mr […] and Mr […] (whose name can be found on the notes as […]) of AGC.[465] At this meeting the competitors exchanged information on as to how they would share the supply of the Peugeot 206 model (code reference T1) and 307 model (T5) between each other ("*Proposal from […] X W/S + polycarbonate or S/L, Z B/L + S/L*") and exchanged price information in relation to laminated sidelights for various PSA models.[466]

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462 See […].

463 See […].

464 See […].

465 For date of meeting, see […].

466 See […].

(253) In its written response to the Statement of Objections Pilkington denied that the notes in question may relate to any meeting involving Pilkington itself and in particular to any participation in it by Mr […], who was in Italy on that day. Furthermore it made clear that the notes record that the proposal by Mr […] for allocation regarded the 106 and Saxo models, not the 206 and 307.

(254) As regards the participants in this meeting, the Commission notes that […] indicated that either Mr […] or Mr […] were the likely representatives of Pilkington in this meeting. Pilkington did not produce evidence that Mr […] could not possibly have attended this meeting. As to the alleged inaccuracies, the Commission observes that the proposal concerning the sharing out of some models was made by […], as indicated in the notes and correctly reported in the Statement of Objections. Pilkington did not deny that such a proposal was brought forward but only clarified that the models concerned were different and that in any event no agreement was reached in relation to these two models. The Commission reiterates that the simple fact that the competitors had a joint intention to reach an anticompetitive understanding is unlawful in nature and refers to the relevant case-law in section 5.3.2.1 of this Decision.

(255) During a contact in late September 2000[467], most likely a telephone call between Mr […] of AGC and Mr […] of Saint-Gobain whose mobile number is written down on the notes of that call taken by Mr […],[468] detailed prices for the Seat MPV as well as the supply of the Audi A6 were exchanged. As regards Seat reference is made to recital (214).

(256) As regards Audi, Saint-Gobain and AGC discussed among themselves the supply for the A6 model. The backlight was supposed to be supplied by AGC while the remaining parts were supposed to be supplied by Saint-Gobain *("A6 B/L → Z rest X")*.

(257) Between 11 and 25 October 2000 Mr […] of Saint-Gobain contacted Mr […] of AGC and communicated an intended price increase for the French and Japanese accounts (Renault, Peugeot, Honda and Nissan) based on increased costs of flat glass, PVB and fuel and energy and shared commercially sensitive information as to how this price increase would result in an increase of 4-5% for tempered glass and of 5-8% for laminated glass.[469]

(258) On 27 October 2000 a bilateral meeting took place at the Brussels Airport Sheraton Hotel[470] during which allocation of supplies for various Audi, Volkswagen and BMW models was agreed.[471] Participants in the meeting would have been, from Saint-Gobain, Mr […], from Pilkington, Mr […] and from AGC, Mr […].

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467 See […].
468 See […].
469 See […].
470 See […].
471 See […].

(259) The first model for which the Big three intended to allocate supplies was the Audi A3 model, code named the "AB". The A3 was supplied by Pilkington and AGC and the idea was to maintain this position, i.e. to allocate the contract to these two suppliers. The notes state that Saint-Gobain will quote in week 46 after AGC and Pilkington had quoted ("*ZY to move first + share*").

(260) With regard to the Audi A6, code name "C6", the statements here refer to the actual situation of distribution of contracts between suppliers. Then for the future Pilkington was likely to get the A6 windscreens and backlights *A6 W/S + B/L → Y*[…].[472]

(261) The next model for which the Big three reached an agreement was the Audi A8, code name "D3". Saint-Gobain wanted to take all supplies to the A8 ("*X to take care of it*"), the American competitor PPG, however, had the development of these products and […] pieces were intended to be built according to the notes from that meeting.[473]

(262) The last model was Audi A4 (code reference B6). The number of cars for the various types of this model was discussed and the fact that Pilkington and AGC should clarify who should supply the Avant, the previous model of which had been supplied by Pilkington and ACG. Saint-Gobain was intended to obtain 100% of the glass parts for the convertible model and Saint-Gobain and AGC were intended to supply the Coupé version.

(263) At this meeting, the most likely outcome of the nomination for the BMW 5 series was discussed as well.[474] It was envisaged that Pilkington should supply the BMW 5 series sidelights but this did not occur in practice. In fact, the nomination letters sent by BMW to the winners on 9 November 2000 show that only AGC ("Z") and Saint-Gobain ("X") were selected by BMW, whereas Pilkington did not get anything.[475]

(264) Therefore […] it is very likely that the reference to "Y" (Pilkington) and "Z" (AGC) regarding supplies for the Audi A4 Avant model on the same page[476] reflected a discussion aimed at finding a way to compensate Pilkington for the loss of the BMW 5 series sidelights. This is an example of how the three main suppliers tried to compensate each other for those casualties in order to keep the shares stable.

(265) At this meeting the Big three also discussed various VW models and considered the possible allocation of supply among them.[477]

(266) According to Mr […] notes, the competitors discussed again the allocation of the contract relating to the new Golf platform (see recital (250) for the first discussions on this topic) with two body types, the CITY car and the

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472 See […].

473 *Ibidem*.

474 *Ibidem*.

475 See annex A2 of answer by […] dated 24 February 2006, page , p. 13929.

476 See […].

477 See […].

MPV (i.e. the Touran). These were completely new models and therefore a new division of contracts was considered possible. The proposal discussed was therefore that Pilkington and AGC should get 50% each of these models. As regards the Golf as well as the Bora, the proposal was for competitors to retain the shares that were then current noted by the words "*As Today*". [478]

(267) At the same trilateral meeting, the competitors finally tried to allocate the contracts among them by agreeing on quotas for various Mercedes models.[479]

(268) As regards the W211 and S211 E class models of Mercedes it is noted that PPG supplied certain types of glass but Saint-Gobain was supposed to take the rest. The Big three intended to share out the various Mercedes A-class models (code reference 169), as follows: Saint-Gobain 50%, Pilkington 25% and AGC 25%.

(269) Pilkington replied to the Statement of Objections[480] stating that, in relation to the meeting of 27 October 2000, there is no sound basis for an allegation of illegality. Pilkington submits that it was awarded no contract by BMW in relation to the relevant RFQ, so that it is inconceivable that an agreement had occurred between the competitors. Regarding the proposed compensation on Audi for losing BMW 's bid, Pilkington submits that there is no basis in the evidence […] to speculate that the alleged discussions relating to the Audi A4 Avant may have involved an attempt to compensate Pilkington for the negative outcome on the BMW 5 series bid.

(270) Pilkington argued further, in relation to Audi, that Mr […] notes only show that discussions involved no more than proposals.

(271) Pilkington finally submits that the discussions concerning Mercedes involved nothing more that attempted agreements, […] "*the competitors tried to allocate…*"[481] (emphasis added by Pilkington). In any case, according to Pilkington, no agreement or understanding was reached at this meeting.

(272) The Commission does not accept Pilkington's arguments. The Commission observes that the proposals in the handwritten notes are very detailed: in relation to the A3 model, Pilkington argues that the proposal was simply to share between Pilkington and AGC. In the reality the notes are much more exhaustive and indicate that in order to adapt its behaviour and obtain the agreed result, Saint-Gobain would have quoted in week 46 after Pilkington and AGC had quoted, as […] stated in the Statement of Objections.

(273) The Commission notes that also an attempted agreement to allocate a contract, whilst done in the framework of an on-going collusion, can be

478 See […].
479 See […].
480 See pages 147, 151-52 and 159-60 of Pilkington's response to the Statement of Objections.
481 See page 165 of Pilkington's response to the Statement of Objections.

considered part of the collusion itself. Therefore the Commission does not change its opinion about the unlawful nature of this contact.

(274) The fact that the outcome of the BMW 5 series bid was not as expected by the competitors does not mean that unlawful discussions and possibly an understanding between the Big three had not occurred. Mr […] notes show that after the outcome of this RFQ was made public the competitors met again and discussed possible compensations for Pilkington on another account, namely VW-Audi. For these reasons the Commission maintains the conclusions as set out in the Statement of Objections.

(275) In late October/early November 2000, a further trilateral meeting took place. At this meeting Mr […] of Saint-Gobain, Mr […] of Pilkington and Mr […] of AGC exchanged prices in order to share the Honda Civic 3-door, 5-door and CRV models amongst themselves. Mr […] notes taken at the meeting in late October/early November 2000 set out a tabular overview of who would get what and at what price. The notes show that Pilkington should supply only the quarter and back light on the CRV. Accordingly, its prices of EUR 18-19 for the quarter light and EUR 28 for the backlight were lower than AGC's prices, which were EUR 20.20 and 29 respectively, and lower than Saint-Gobain's prices,. EUR 22.4 and 34 respectively, thus allowing AGC and Saint-Gobain to "cover" for Pilkington[482].

(276) In its written response to the Statement of Objections[483] Pilkington argued that there is no proper basis to allege that the relevant page records a meeting at all, and therefore not even an exchange of data, which could be AGC's own estimates.

(277) The Commission responds that the detail of the data reported is a clear indication that they are a result of a meeting or a telephone contact, […] which was not contested by Saint-Gobain.

(278) Between 31 October and 8 November 2000 the discussions concerning Audi continued between Saint-Gobain and AGC by various telephone calls.[484]

(279) During these telephone calls the two competitors tried to allocate supply for the Audi B6 Coupé by exchanging prices for this model - in fact a project which was ultimately cancelled. Under the date 31/10/00, Saint-Gobain provided revised prices compared to the prices at the top of the page of Mr […] notes under the heading "OLD". Saint-Gobain reported to AGC furthermore that it would charge development costs of EUR 250 000.

(280) On 1 November 2000 a trilateral meeting took place at the Charles de Gaulle Sheraton Hotel outside Paris between Mr […] of Saint-Gobain,

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482 See […]. In the Statement of Objections one of the figures indicated for the CRV model was 24 instead of 34. However, see the original handwritten note, p. 11855, where the figure "34" is clearly readable.

483 See pages 182-183 of Pilkington's response to the Statement of Objections.

484 See […].

Messrs […] of AGC and possibly a representative of Pilkington.[485] Although it cannot be established with certainty that a representative from Pilkington was actually present, the notes report Pilkington's interests. The table in the notes of Mr […] illustrates how the three suppliers agreed on price increase targets for certain customers and to apply the price increase to the Honda, Nissan, Renault and Peugeot accounts but not to the Toyota account. From the notes it can be seen that the competitors agreed to apply uniform price increases for windscreens by 4%, backlights by 3% and sidelights by 4%. The phrase "*AS YOU LIKE*" indicates that the suppliers also agreed that the details of implementing the increase were at each supplier's discretion as long as they complied with the overall targets and announced the price increase at the latest by the beginning of December. It is likely that these price increases were agreed in connection with the increased prices for raw materials and exchange rate fluctuations since the Big three agreed to include price increase clauses in all new contracts to take account of changes in oil prices and the US dollar/euro exchange rate ("*For the future all contracts must include a clause for material cost→ This will relate to OIL + $ exchange rate*").[486]

(281) In its written response to the Statement of Objections[487] Pilkington argued that it did not pursue or achieve the price increases discussed at this meeting in any case. As regards the non-implementation of the price increases agreed at this meeting, the Commission refers to section 5.3.2.1 and to the case-law cited therein.

(282) In autumn 2000, Mr […] of AGC met with Mr […] of Saint-Gobain and Mr […] of Pilkington[488]. For certain PSA models, namely the Citroën C3 5-Door and the C-2 3-Door, the Citroën Berlingo and the Peugeot Partner a stock-taking and a possible allocation of contracts was discussed.[489]

(283) In its written response to the Statement of Objections[490] Pilkington argued that the discussion described in recital (282) cannot be regarded as recording an unlawful behaviour. Furthermore, since the two models Citroën C2 and C3 had already been allocated prior to this meeting, the information regarding the A8 (the Saxo 5-door), can only report what happened actually, since the contract for this model had been awarded in 1999.

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485 See […]. At page 186 of its written response to the Statement of Objections Pilkington contends the presence in this meeting of Mr […], who was indicated as the possible representative in the Statement of Objections: according to Pilkington, he was very likely to be in Italy that day, as shown by the travel expenses for the night between 1 and 2 November 2000. Moreover, the notes are not indicating that Pilkington was present. Pilkington submits, therefore, that this was a bilateral meeting. The Commission responds that even if Mr […] may have actually spent in Italy the night between 1 and 2 November 2000, nothing is said by Pilkington on the actual whereabouts of Mr […] in the previous night, so that it may be that he participated in the meeting in Paris in the morning of 1 November 2000 and travelled in the afternoon to Italy, straight after the conclusion of the meeting.

486 See […].

487 See page 187 of Pilkington's response to the Statement of Objections.

488 See […].

489 See […].

490 See pages 97-98 of Pilkington's response to the Statement of Objections.

(284) The Commission disagrees with this reasoning. With regard to the models already allocated, the Commission notes that the participants exchanged information about the volume as a monitoring activity with regard to Berlingo and in any event the competitors may also have exerted at this meeting a monitoring activity to verify whether the allocation of contracts had gone as previously discussed among them.

(285) In autumn 2000 a telephone contact took place between Mr […] of Saint-Gobain (whose French mobile phone number is noted down on top of the page) and Mr […] of AGC[491] during which price information was exchanged in relation to the Peugeot 307 model (code reference T5) and allocation of contracts for the Citroën C2 (code reference A6) and the Berlingo/Partner model (code name A18/A19) was agreed. In fact Saint-Gobain and Pilkington were intending to "cover" AGC on the Peugeot 307 model. It can moreover be seen from the handwritten notes that AGC and Saint-Gobain agreed to split the supply for the Citroën C2 model. The backlight was supposed to be supplied by AGC while the remaining parts were supposed to be supplied by Saint-Gobain.[492]

(286) In its written response to the Statement of Objections[493] Pilkington argued that the Commission cannot proceed with any allegation in relation to the relevant page of Mr […] notes since there is no corroborative evidence available to the Commission and the explanations given […] are vague and not reliable. At most they are pure speculation like in the case of the Peugeot 307.

(287) The Commission disagrees. Contrary to Pilkington's beliefs, the Commission found that the explanations regarding the pricing intentions on the Peugeot 307 model are exhaustive and more importantly that they clearly demonstrate the intent to 'cover' in order to favour the allocation of the contract in question to AGC.

(288) In November 2000 the discussions about the new Mercedes A-class continued. The notes[494] taken by Mr […] are believed to have been made on the basis of a telephone call in November 2000 with Mr […] of Pilkington. Pilkington and AGC exchanged price and quantity information on the A-class, in particular the tooling costs and container, namely costs of Pilkington for this model as well as information on the encapsulation requirements, the "TPE" (a type of plastic) or Pilkington's proposal in this regard.

(289) Further discussions on the Mercedes A class (the DCX 169) took place around the end of the year 2000 during telephone conversations between

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491 See document labelled SM25, p. 1312-1313, see […]. According to the Article 18 response of […] (answer to question 26), p. 45562 and 45702, Mr […]'s previous mobile phone number does not coincide with this number. The evidence on the file is however sufficient to prove that the telephone number […] belonged to Mr […] (doc. SM25), p. 1312.

492 See […], see additional Article 18 response of […] (completion by […] of question 14 of the Article 18 letter of 8/5/2006 containing spread sheets sorted per carmaker, sourcing per year, per model, attribution in single, dual or multi source), p. 35394-35414.

493 See pages 98-99 of Pilkington's response to the Statement of Objections.

494 See […].

the three main competitors.[495] Pilkington and Saint-Gobain communicated to AGC during these calls the prices that they were proposing, which allowed the three competitors to allocate the contract.

(290) In its written response to the Statement of Objections[496] Pilkington submits that these discussions on the Mercedes account involved nothing more than a 'possible' agreement to cover Saint-Gobain. According to Pilkington, there was no eventual agreement or understanding between the parties. Finally, the actual outcome of the RFQ did not reflect the supposed agreement.

(291) The Commission repeats its argument that an expression of joint intention suffices and that implementation is not required for an arrangement to be unlawful in its nature.

(292) On 9 November 2000 a trilateral meeting took place between Mr […] of Pilkington, Mr […] and Mr […] of AGC and Mr […], Mr […] and Mr […] of Saint-Gobain at the Charles de Gaulle airport Sheraton Hotel outside Paris during which the competitors exchanged prices for the Fiat account. For example, with regard to the Alfa Romeo 156, pricing information for the entire carset was exchanged between Pilkington and AGC. Pilkington informed its competitors that it was about to increase the sidelights price for the Punto by 7-8%. The Big Three also discussed[…].[497]

(293) In its written response to the Statement of Objections[498], despite not denying its participation in this meeting, Pilkington argued that the nature of the evidence […] as well as of the explanations does not permit an allegation of any actual agreement or understanding at this meeting. […].

(294) Regarding Pilkington, the Commission reiterates the observations set out in the Statement of Objections on the unlawful nature of the exchange of commercially sensitive information concerning the upcoming price increase, which occurred at this meeting, and therefore does not change its conclusions. […].

(295) A further contact among the three main suppliers Saint-Gobain, Pilkington and AGC concerning VW in 2000 occurred either as a meeting at the Brussels Airport Sheraton Hotel or as a telephone call some time prior to or around 13-14 December 2000, as can be seen from the handwritten notes of Mr […] bearing that date.[499]

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495 See […].

496 See pages 165-166 of Pilkington's response to the Statement of Objections.

497 See […]. The text blocks can be explained as follows: The first two lines reflect the exchange of carset prices proposed to Fiat for the Alfa Romeo 156 series by AGC and Pilkington. AGC's proposal was 140.000 Italian Lire thus 900 Lire less than Pilkington's price. The next line reflects information received from Pilkington that it intended to increase the price on the Fiat Punto sidelights by 7-8%. The next line starting with "*X any price increase*" reflects Saint-Gobain's intention that a price increase on the Fiat account should be discussed separately from any bundles such as the "package 12". The following paragraph provides details on Fiat's "package 12" relating to the BMPV. According to these notes Fiat intended to achieve inter alia a reduction of 2.5% based on its turnover.

498 See page 132 of Pilkington's response to the Statement of Objections.

499 See […].

(296) During that contact supply of the backlights of the Passat and Bora (the 4-door model based on the Golf platform) was discussed. […], Saint-Gobain suggested it should supply the Passat while AGC could supply the Bora ("*Bora BL Possible exchange with Passat B5 BL*").

(297) […] the three main suppliers also exchanged price information with regard to the Mitsubishi Carisma produced by Nedcar in the Netherlands. It can be seen from the notes that Saint-Gobain informed its competitors that it had reduced its price for the windscreen by 2-3% ("*Nedcar Carisma WS SGV reduced by ≈ 2-3%*").[500]

(298) In its written response to the Statement of Objections Pilkington argued that […] is too vague: expressions like "*it is believed that all the three suppliers were present*" is only speculation and cannot bear any probative value. As to the substance, the sentence on the models Passat and Bora cannot, in Pilkington's opinion, bear the meaning given it […].[501]

(299) The Commission considers that Pilkington's explanation is not convincing. Contrary to Pilkington's opinion, the presence of the three competitors, […], is apparent in view of the three letters XYZ on top of the second section of the relevant page[502]. In addition to that, neither AGC nor Saint-Gobain has contested the Commission's allegation in relation to the models Passat and Bora. Pilkington has moreover not denied that this exchange of information occurred and has not submitted an alternative explanation of these notes. Therefore the Commission confirms its assessment as set out in the Statement of Objections.

4.4.4. 2001

4.4.4.1. Summary

(300) In 2001 the Big three had at least ten trilateral meetings on 26 January, 26 April, 20 June, 19 July, 7 August, 29 October, during November, on 29 November, 6 December and at the end of 2001. There was furthermore one bilateral meeting between Saint-Gobain and Pilkington on 15 November and one bilateral meeting between AGC and Soliver on 4 December. Saint-Gobain had two contacts with both Pilkington and AGC prior to 18 January and around 14 February and one contact with AGC before September. Pilkington and AGC contacted each other three times in May, on 10 September, and on 6 November. Finally AGC and Soliver had several telephone contacts between 19 November and 12 December.

(301) During these meetings and contacts referred to in detail in the following section, the competitors exchanged price information as well as other commercially sensitive information with a view to allocating supplies to the following customers: PSA (26 January, 20 June, 29 October and in November), Renault/Nissan (26 January, 20 June, 29 October and 29 November), BMW (26 January, 19 July, sometime before September, 6

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500 See […].

501 See pages 148-149 of Pilkington's response to the Statement of Objections.

502 See page […] of the file.

November and 15 November), Volkswagen (prior to 18 January, 26 April, 7 August and 15 November), DaimlerChrysler (above all Mercedes, in January, before or on 14 February, 19 July and 15 November), General Motors (19 July and 6 December), Fiat (20 June, 19 July, on 29 October, 29 November, towards the end of the year and during several telephone calls and meetings between 19 November and 12 December), Ford (26 January, some time in 2001 concerning Land Rover, on 20 June, on 10 September and on 15 November).

4.4.4.2. Chronological description of the contacts

(302) Discussions regarding the DaimlerChrysler account, which had been the subject of several contacts an the end of 2000, were resumed in January 2001 and involved an exchange of detailed price information for the glazing of the Mercedes A class, internal code 169. The notes taken at this contact by Mr […] bear the date of 18 January 2001 on it.[503] On that date, price data for AGC was added by Mr […] in relation to the A class model. The price information for Saint-Gobain may have been written prior to this time on the basis of a telephone conference with Mr […] of Saint-Gobain and Mr […] of Pilkington.[504]

(303) From the handwritten notes by Mr […] it can be seen that AGC also exchanged price information for the Seat MPV.[505] A table in those notesshows the competitors' proposed prices as exchanged between them. According to the leniency applicant the intention was for Pilkington and AGC to share all parts with the exception of the windscreen. Saint-Gobain was therefore due to "cover" the other competitors in relation to these parts.[506]

(304) In its written response to the Statement of Objections[507] Pilkington submitted that this would be the proof that the alleged agreement reached in mid-2000 in relation to Seat (see recital (211) et seq.) was not implemented since the framework emerging from this contact, namely of still ongoing discussions, is considerably different from what was discussed and allegedly agreed in mid-2000.

(305) The Commission considers that it is not necessary that the agreement previously reached was implemented for whatever duration in order to consider such behaviour contrary to Article 81 of the Treaty. Equally, the fact that the understanding emerging from this telephone call is different from what characterised the contact in mid-2000 does not change the Commission's conclusions on the unlawful nature of this as well as of the previous contact.

(306) On 26 January 2001 a "club" meeting was held in Brussels on the fringe of a GEPVP meeting. Present at the sub-committee meeting on that day,

503 See […].
504 See […].
505 See […].
506 See […].
507 See pages 150-151 of Pilkington's response to the Statement of Objections.

according to the official agenda, were Mr […] and Mr […] of AGC, Mr […] of Pilkington and Mr […] of Saint-Gobain. It is therefore very likely that the participants in the meeting of the afternoon were the same as those attending the official meeting held in the morning of the same day. The handwritten notes of Mr […] illustrate that he took notes in connection with some of the official points discussed in the context of the GEPVP committee meeting and that these points were followed by an exchange of views on how to allocate the Citroën C6 Berline model ("*C6 X* [Saint-Gobain] *is requesting do Z* [AGC] *want to give up*.").[508]

(307) The competitors also exchanged price information regarding the Renault account including in particular price increases and price adjustments by mid-February – end of March 2001 ("*X* [Saint-Gobain] – *Renault prices to be adjusted by Mid Feb – End March*") with a view to coordinating price increases and maintaining their positions as suppliers to Renault.[509]

(308) At this meeting discussions between the competitors concerning the BMW account were also resumed. As can be seen from Mr […] handwritten notes, price information was exchanged between the three competitors. In particular, Saint-Gobain reported about its ongoing negotiations with BMW. In this context, BMW wanted a 3% price decrease whereas Saint-Gobain wanted a 5% increase. BMW then asked for no price increase which was rejected by Saint-Gobain. In the light of this information, Pilkington informed the others that it was to announce an increase of its prices to BMW in the following week.[510]

(309) Saint-Gobain also informed its competitors that, with regard to the Ford account, prices had to go up for all new contracts ("*X – Ford (Volvo, Nedcar, Mitsubishi) must respect contracts but after ↑↑*").[511]

(310) The handwritten notes of Mr […] which were taken following the official GEPVP meeting illustrate how the […] (Mr […] and Mr […] of AGC, Mr […] of Pilkington and Mr […] of Saint-Gobain) exchanged sensitive customer information as well as pricing information regarding Fiat, BMW, DaimlerChrysler, Ford, Renault and BMW[512].

(311) Saint-Gobain furthermore informed its competitors that it had refused to increase supply to VW by stating that it had no capacity (" * *VW looking for new suppliers, SGV said in writing that they have no capacity for 6-8 months*").[513]

(312) In its response to the Statement of Objections[514] Pilkington argued that the allegations concerning this meeting either contain no specific illegality or

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508 See Article 18 response of […], for the minutes of the GEPVP automotive sub-committee meeting and list of participants of 26/1/2001, see p. 14851-14853, see […].

509 See Article 18 response of […], for the minutes of the GEPVP automotive sub-committee meeting and list of participants of 26/1/2001, see p. 14851-14853, see […].

510 See […].

511 See […].

512 See […].

513 See […], see […] response to Article 18 request, p. 14851-14853.

514 See pages 102 and 122 of Pilkington's response to the Statement of Objections.

only show a unilateral suggestion by Saint-Gobain in relation to particular accounts, for example Renault or Volkswagen. Pilkington rebutted the announcement of a price increase concerning BMW, stating that it could not find any record in its files of it having attempted or even implemented any price increase to BMW at around this time. If there was a disclosure by Pilkington, it could not be "*in light of*" what Saint-Gobain disclosed. At most, the disclosures were simultaneous and regarded already determined intentions.

(313) The Commission notes, firstly, that Pilkington admitted its presence in this meeting and that it does not state that the exchange of sensitive information with notably Saint-Gobain did not take place. Secondly, Saint-Gobain has not contested the facts as set out in the Statement of Objections, including the description made of this meeting by the Commission. Thirdly, the Commission observes that the notes referred to in recital (310) record an exchange of information regarding several accounts, including Renault and Volkswagen. In any event, even if this meeting concerned a unilateral disclosure of commercially sensitive information by one (or more) of the participants, as a result of this disclosure the other participants took account, or were put in a position to take account, of the information provided by Saint-Gobain, in particular concerning the price increases forecasted for February-March 2001. The competitors therefore adapted or could have adapted their conduct on the market in breach of the Community competition rules. For these reasons, the Commission does not change its conclusions on the unlawful nature of this meeting.

(314) In a contact either before or on 14 February 2001, scheduled date of a GEPVP meeting, Saint-Gobain informed Mr […] of AGC and Mr […] of Pilkington of a price reduction negotiation that Saint-Gobain (X) had with DaimlerChrysler (DC): "*X – DC asked for 3%↓ but a contract of -0.5% was agreed. If DC breaches the contract X will increase their prices. DC is stopping*".[515]

(315) A meeting was held between the three main competitors on 26 April 2001 at 11.00 at the Sheraton Brussels Airport Hotel[516]. Participants were Mr […] of AGC, Mr […] of Saint-Gobain and Mr […] of Pilkington. This information is corroborated by travel records found at the premises of […].[517] Moreover, […] confirmed the meeting and clarified its content in the […]. According to […], the topic of the meeting was to discuss the Volkswagen account.[518]

(316) In its written response to the Statement of Objections[519] Pilkington argued that the statement "*the topic of the meeting was to discuss the Volkswagen*

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515 See […].

516 See p. 36 of the file.

517 According to the "expense claim" document dated 3 May 2005 Mr […] paid for a room rental as well as food and beverages for several persons in the Sheraton Brussels Airport Hotel. See document labelled KS15, p. 38304-6.

518 See […], answer to question 61 about the document KS15, p. 45580.

519 See page 153 of Pilkington's response to the Statement of Objections.

account" would not be sufficient to establish any possible infringement of Article 81 of the Treaty.

(317) The Commission points out that the meeting communicated by the informant fits into a series of meetings where various accounts were discussed with a view to sharing or allocating contracts among the competitors. On the one hand, Saint-Gobain confirmed both the meeting date and the content thereof. On the other hand, the fact that the meeting was held at an airport hotel and is not contested by Saint-Gobain or denied by Pilkington itself speaks against the hypothesis of a purely accidental and harmless gathering, since there is evidence of a series of contacts and meetings held between the same individuals and on the same or very similar topics (price comparison and coordination) in the same period. Therefore the Commission maintains its view that the discussions concerning the Volkswagen account, referred to in recital (315), can be considered in the framework of the collusive contacts held in this period and which were aimed at sharing sensitive information or allocating the account concerned.

(318) […] in May 2001 Pilkington and AGC exchanged price information regarding the quotation for the new Land Rover Freelander.[520] The target price is the price set by the customer which appears to be the same as the prices quoted by Pilkington. The table […] contains Pilkington's delivered prices for glass only, for assembly as well as the total price and compares Pilkington's delivered prices for glass only and the total price with the target price. Pilkington's delivered prices are very similar to the prices received by Mr […] from Pilkington on 3 October 2000, as indicated on page 61 of Mr […] notes.[521] Pilkington and AGC moreover exchanged information on the target price set by the customer for the Landrover quotation to Pilkington and Pilkington's quotes.[522]

(319) In its written response to the Statement of Objections[523] Pilkington did not contest being party to this contact. However it contended that it is not clear from the document recording an exchange of information that the source of the information delivered during the contact was Pilkington itself and questioned whether Ford could have been the source of that information.

(320) The Commission points out that Pilkington has not denied being party to this contact. On that basis it does not seem credible that the source of the pricing information was Ford and not Pilkington itself. The Commission therefore maintains its conviction that the source of this information is Pilkington and confirms its conclusions on the nature of this contact.

(321) A trilateral meeting took place on 20 June 2001 at the Charles de Gaulle airport Sheraton hotel outside Paris. The participants were Mr […], all of Saint-Gobain, Mr […] of Pilkington and Mr […] and Mr […] of AGC. Price information in respect of the customer Peugeot was exchanged ("*It*

520 See document labelled SJ2 dated 22 May 2001, p. 10773, and […].
521 See […].
522 See document labelled SJ3, p. 10775 of the file.
523 See pages 171-172 of Pilkington's response to the Statement of Objections.

seems that PSA is more willing to increase prices due to energy than others. X, Y feel that they may get a price increase. They expect something less than 1%").[524] Furthermore, Pilkington provided market share estimates for the year 2004 demonstrating that Saint-Gobain would have the largest share at Peugeot with 54%,[525] which constitute an example of how the Big three monitored the respective market positioning in the context of their regular meetings.

(322) The participants moreover exchanged information in respect of coated glass situation at Renault and sensitive price information in order to have a co-ordinated response to Renault's demands for price decreases and to avoid changes in their respective positions as regards the Renault/Nissan account.[526]

(323) As set out in these notes, Saint-Gobain gave no price reduction to Renault in 2001 but intended to propose a price reduction of maybe […] % for 2002. However, the reference to "*the problem is the coated glass* […] *energy increase and some parts they need to increase price on*" indicates that Saint-Gobain may have had difficulties in achieving this price reduction. These notes furthermore indicate that Pilkington informed the other competitors that it would equally not agree to a price reduction in 2001 and that the maximum price reduction Pilkington and Saint-Gobain would accept for 2002 was […] % which would be conditional on more business granted by Renault ("*The maximum is about […] reduction linked (conditional) to business and new market*"). These discussions were driven by Pilkington's concerns that, being the smallest among the competitors for the Renault account, it would not accept any change in the current market share split between the three suppliers ("*Absolute no reduction in Market share*"). Finally, as can be seen from the notes, the competitors exchanged information in relation to the concept of global sourcing which they considered to be a risk for them because higher volume orders from car manufacturers would entail downward pressure on prices.[527]

(324) The notes of Mr […] of the meeting of 20 June 2001 also contain an example of market share monitoring between the competitors. Pilkington informed the others that it had lost the glazing for 140 000 Nissan Primera for which it would need compensation.[528]

(325) Regarding Fiat, at this meeting the competitors furthermore reviewed their respective market positions with respect to four new Fiat models for which start of production was foreseen for 2003 as well as for some existing models. The new models were the new Alfa 156, the Lancia Ypsilon, the Fiat Idea (code name BMPV) and the Multipla (code name CMPV) models, while the existing ones were the Lancia Lybra and the Fiat models Ducato, Stilo and Punto. In particular, the documents in the Commission's

524 See […].
525 See […].
526 See […].
527 See […].
528 See […].

possession show that the participants intended to find compensation for AGC.

(326) […][529], Fiat generally awards 60% of a package to the supplier who was the first awarded the development of a model and allocates the remaining 40% to another supplier or other suppliers. The three main competitors envisaged that, following the rule agreed among themselves, Pilkington and AGC should each have a share of 40% and Saint-Gobain a 20% share of Fiat's business. As can be seen from the notes taken at that meeting the market share of AGC was down to 37%. Accordingly, in order to arrive at the agreed 40% market share target, AGC needed to get an additional 3-4% extra ("*SPX needs 50-60K cars to cover ≈ 4% Market share*"). The competitors explored several possibilities how to allocate the missing 4% to AGC by obtaining 18 000 cars of the Marea, 20 000 cars of the Ducato, which appeared difficult, and/or 22 000 cars of the Punto.

(327) Finally, the Big three exchanged information for glass parts for four Volvo models.[530] These models were the C70, the S80, the S60 and the V70. The prices of Pilkington and Saint-Gobain were provided to AGC so that they would quote higher prices than Pilkington and Saint-Gobain. As AGC had not supplied to Volvo, they needed to be informed of the general price levels in order to know how they could "cover" the other competitors.[531]

(328) In its response to the Statement of Objections[532] Pilkington did not deny its presence in this meeting (although it contended that Mr […] notes would not be clear as to the date and place of the meeting) and stated, concerning the discussions held, that "*such discussions between competitors should not take place*"[533]. Despite this, Pilkington argued that the allegations concerning this meeting contain no specific illegality and there is no evidence that the discussions produced any anti-competitive effects. Pilkington stated that, in relation to Fiat, there is no documentary evidence for the proposition cited in the Statement of Objections that "*the three main competitors envisaged that Pilkington and AGC should each have a share of 40% and Saint-Gobain a 20% share of Fiat's business*". As to Renault/Nissan, Pilkington pointed out that, even if the relevant notes evidence some level of disclosure by Saint-Gobain and Pilkington of pricing information in relation to Renault, it is not possible to conclude that this disclosure served to positively agree any coordinated plan vis-à-vis Renault. Finally, concerning Volvo, Pilkington pointed out that AGC was a non-supplier to Volvo, therefore it is questionable why AGC would have sought an arrangement. Furthermore, AGC did in fact seek business from Volvo to the point that it took business from Pilkington (glass pieces for the S60 model) not long after the alleged discussions reported by the Commission.

529 See […].
530 See […].
531 See […]. The prices are expressed in Swedish Crowns.
532 See pages 102, 124, 133-34 and 170-71 of Pilkington's response to the Statement of Objections.
533 See page 102 of Pilkington's response to the Statement of Objections.

(329) The Commission notes that Pilkington has not denied its presence in the meeting and admitted that discussions of this type are not permitted under Article 81 of the Treaty. In addition Saint-Gobain has neither contested the factual description of this meeting, nor the Commission's assessment. Concerning the alleged lack of documentary evidence concerning the agreement on Fiat, the Commission points out that this understanding is reported at page 8 of Mr […] handwritten notes[534] in relation to the contact of July-September 2000, where it is read that AGC had lost 19% on Fiat's business but it believed to gain 4% in the near future. In order to respect the "rule" it was supposed to gain another 3% of Fiat's business ("*33+4 = 37% Must find 3%*"). Regarding the disclosure of pricing information in relation to Renault by Pilkington and Saint-Gobain, the Commission points out that such disclosure of information is prohibited under Article 81 of the Treaty, as it enables the competitors to adapt their conduct on the market and to anticipate the behaviour of other market players. Concerning Volvo, the fact that an agreement was subsequently not followed by one or more competitors does not change the unlawful nature of such an agreement. Therefore the fact that AGC subsequently took business from Pilkington is irrelevant for the assessment of the nature of the discussions which occurred at this meeting. Consequently, the Commission confirms its conclusions on the unlawful nature of this meeting.

(330) A further meeting between the three competitors took place on 19 July 2001. The participants at this meeting were from Pilkington Mr […], from Saint-Gobain Mr […], Mr […] and Mr […] and from AGC Mr […] and Mr […].[535] The BMW account was discussed and the three suppliers exchanged price information for the various glass pieces of the model X5.[536]

(331) The Mercedes A-class model was further discussed. It can be seen from the handwritten notes of Mr […] that Saint-Gobain was not happy to see the W169, a specific model of the A class, go to Pilkington. Instead, it wanted to obtain 50% of the W169 model of the A class from Pilkington in exchange for 50% of the new S class.[537]

(332) The participants furthermore exchanged price information for the Opel Astra model in respect of what they would quote for the development and testing costs under the so-called 'Supplier Integration' [S.I.] scheme requested by GM ("*S.I. ≈ 1.5 M € / vehicle X* [Saint-Gobain] *⇨ 4.5 M € / total project ≈ 1.5 – 2 M € / total project Y* [Pilkington])"[538]. Moreover, Pilkington informed its competitors that it was going to "*quote for the full 100% quantity*" of the heated coated windscreen.

(333) The three competitors finally exchanged price information with regard to Fiat and in particular to the upcoming RFQ in order to allocate supply for three models. Particularly significant is the case of the new Ypsilon, for

534 See […].
535 See […].
536 See […].
537 See […].
538 See […].

which […]. It was agreed that Pilkington should be awarded 60% of the Ypsilon as can be seen from the notes in relation to the meeting held on 20 June 2001 and described in recital (326). Accordingly, Pilkington had the lowest proposed price for the entire carset, and the other three competitors were supposed to "cover".[539]

(334) In relation to this meeting, in its written response to the Statement of Objections[540] Pilkington contested that these discussions involved Pilkington and argued that, concerning BMW, there was nothing more than a unilateral disclosure by Saint-Gobain. Also, for Mercedes, Pilkington submits that the "club" discussions never crystallised into any actual agreement, even if it admits that "*one party may have been left with an impression that something was agreed, in this case Saint-Gobain*"[541]. Regarding the price disclosure in relation to the Opel Astra model, Pilkington commented that this has been "*a bare revelation by it and Saint-Gobain of possible pricing for one element of their possible bids for Opel Astra*"[542], but the Commission would have no elements to allege any understanding to coordinate the bidding behaviour among the competitors. The allegations concerning Fiat are, on the other hand, based on the false premise that the parties reached an agreement during this meeting, while the notes evidence only a proposal in relation to Lancia Ypsilon. In fact, according to Pilkington, the actual outcome of the RFQ did not reflect this proposal. In any event, the Lancia Ypsilon development contract (and therefore a 60% supply) was awarded to Pilkington in June 2000, that is, a year before this meeting.

(335) The Commission notes that the fact that a development contract was awarded to a carglass supplier did not mean that it would also have been awarded the actual supply for commercial production. Upon completion of the development phase, there is usually a new round of consultations between the car manufacturers and the carglass suppliers. Prices and volumes to be delivered are then often renegotiated with the car manufacturers[543]. It is therefore plausible that at the time of this meeting the subsequent production and supply phase was not yet initiated. In addition, the documentation in the file does not permit to conclude that the awarding of a percentage of production for this model was already decided. Finally, the argument by Pilkington that "*one party may have been left with an impression that something was agreed*", but that nothing was actually agreed on, is simply not acceptable. Behaviour of one party which first agrees or gives the impression that it has agreed but which thereafter chooses to change its behaviour (for instance to cheat) is considered to be contrary to Article 81 of the Treaty where such behaviour has the object of restricting competition even though the agreement is not implemented.

(336) A further meeting was held between Saint-Gobain, Pilkington and AGC on 7 August 2001 at the Rome Fiumicino airport. According to the informant,

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539 See […].

540 See pages 135, 166-167 and 177 of Pilkington's response to the Statement of Objections.

541 See page 167 of Pilkington's response to the Statement of Objections.

542 See page 177 of Pilkington's response to the Statement of Objections.

543 See Saint-Gobain Glass France's Article 18 reply of 24 February 2006, page 20, p. 18668 of the file.

participants were Mr […] of AGC, Mr […] of Saint-Gobain and Mr […] of Pilkington.[544] This information is corroborated by travel records found at the premises of […]. According to travel records dated 8 August 2001, Mr […] was in Rome that day[545] and met with a representative of Pilkington, as confirmed bySaint-Gobain. According to Saint-Gobain, the topic of the meeting was to discuss the Volkswagen account.[546]

(337) In its written response to the Statement of Objections[547] Pilkington argued that the statement "*the topic of the meeting was to discuss the Volkswagen account*" would not be sufficient to establish any possible infringement of Article 81 of the Treaty.

(338) The Commission responds that the meeting communicated by the informant fits into a series of meetings where various accounts were discussed with a view to sharing or allocating contracts among the competitors. Saint-Gobain confirmed both the meeting and the content thereof. Moreover, the fact that the meeting was held at an airport, which is is neither contested by Saint-Gobain nor denied by Pilkington itself, speaks against the hypothesis of a purely accidental and harmless gathering, since there is evidence of a series of contacts and meetings held between the same individuals and on the same or very similar topics in the same period. Therefore, the Commission takes the view that the discussions concerning the Volkswagen account, referred to in recital (336), can be considered in the framework of the colluding contacts held in this period and aimed at allocating the account concerned.

(339) Sometime before September 2001, in a telephone conversation between AGC and Saint-Gobain, prices for an allocation of the BMW series 1 (code name 81 for the 3D-version and 87 for the 5D-version) and X3 (code name E83) models were discussed between the two competitors. After a detailed account of Saint-Gobain's prices of the various glass parts[548] a second table was drawn up comparing the prices for all three main suppliers Saint-Gobain, Pilkington and AGC for the series 1 model.[549] As can be seen from that table the price of Pilkington for the entire carset was the lowest, although AGC had the lowest price for the backlight. On the basis of this table the competitors were able to "cover" each other by quoting higher prices than the preselected winner.

(340) With regard to the X3 model, Saint-Gobain and AGC exchanged prices for the various glazing parts followed by a more general discussion on the allocation of models across the BMW account. The competitors intended to share the BMW business on the basis of carsets. Accordingly, the intention was the that the backlights of the series 1 3D-version (90 000 pieces) and 5D-version (75 000 pieces) would be awarded to AGC so that they would have

544 See letter from the informant of 7 October 2003, p. 7 of annex, p. 37.
545 See document labelled KS16, page 4418.
546 See […] answer […] to question 62 about the document KS16, p. 45580.
547 See page 153 of Pilkington's response to the Statement of Objections.
548 See […].
549 See […].

approximately the equivalent to 54 000 carsets[550], whereas the rest of the parts of these models as well as the parts of the E82 model (60 000 carsets) should be awarded to Pilkington which should then obtain approximately the equivalent of 170 000 carsets. The conclusion of this allocation was that AGC would need to compensate approximately 35 000 carsets to Saint-Gobain, that Pilkington was, as stated in the notes, "*Y back to normal*" and that Saint-Gobain could try to obtain the X3 parts. It was furthermore agreed that AGC would compensate Saint-Gobain in connection with the BMW account: "*Z to compensate to X ≈ 35 K cars*".[551]

(341) In its written response to the Statement of Objections[552] Pilkington argues that there is no evidence that Pilkington was a direct or indirect participant in this contact between AGC and Saint-Gobain. Furthermore, in relation to the table […], Pilkington submits that there is not a single piece in the table for which Pilkington's price is the lowest, but that AGS's prices are lower that Pilkington's. Therefore, Pilkington submits, the table does not reflect an agreement by AGC to cover Pilkington at all, but, on the contrary, at the bottom of the page, it can be read that there was an understanding that AGC would get the backlights on the models in question.

(342) The Commission observes that, although it is true that for the single pieces of the carset one of the other competitors had lower prices, when the carset is taken as a whole (since the basis for this bid was the carset and not the single glazing piece), it can be observed that the price in euros for Saint-Gobain was 86.17, that for AGC was 88.36 and that referred to Pilkington was 80.52, indeed the lowest offer. The same results would be obtained if the quarter lights for 3-door models were not considered (theoretically not included in every carset), in this case the respective offers would have been for Saint-Gobain 73.27, for AGC 75.44 and for Pilkington 67.84, equally the lowest. Finally, the agreement went as expected since, as confirmed by Pilkington, it eventually was awarded the 100% supply for the E81 and E87 models. For these reasons, the Commission does not accept Pilkington's arguments.

(343) During a telephone conversation on 10 September 2001, Pilkington and AGC exchanged price information. Pilkington informed AGC on its initial quote for the Ford Transit model[553].

(344) On 29 October 2001, a meeting was held between Mr […] of Pilkington, Messrs […] of Saint-Gobain and Mr […] and Mr […] of AGC at the premises of the "Fédération des Chambres Syndicales de l'Industrie du Verre" (FIV) in Paris.[554] During that meeting the three competitors exchanged price information with a view to coordinating price reductions demanded by PSA and maintaining their positions as suppliers to PSA.[555] In particular, in order to avoid such price reductions the competitors

550 Calculated as follows: 90 000 + 75 000 making 165 000 divided by three coming to appr. 54 000.
551 See […].
552 See pages 162-63 of Pilkington's response to the Statement of Objections.
553 See […].
554 See […].
555 See […].

discussed between themselves how they could align the price reductions they were willing to commit to. For instance Pilkington envisaged a […] discount on all its PSA turnover because AGC had also quoted for this business ("*– No discussion on […] contract T1 BL discount […] of total PSA T/O* [turnover] *due to Splintex move on this part*"), while Pilkington wanted to keep the backlights of the 206 model (the T1) under all circumstances. AGC informed the others that they only envisaged a very small price reduction and only on parts the production of which was coming to an end in 2001 or early 2002.[556]

(345) Furthermore, the competitors coordinated on the detail of cost information to be provided to the customer Renault with regard to the Renault Modus model (reference code J77). Renault had asked for a detailed cost break down of the Modus model's glass parts which would have helped to ask for further price reductions. The competitors agreed however that they would only provide information on glass plastic interlayers (PVB) and maybe other raw materials as well as R&D of around 5% but not on efficiency and energy cost.[557] The three competitors also exchanged price information with regard to the windscreen and the backlight of the Renault Modus. As can be inferred from the notes, it was agreed between the three competitors that AGC ["Z"] should "cover" the others by quoting 5% higher ("*On the BL, Z can quote (18.50+5%) + (21.5+5%)").* Moreover, the three competitors agreed on under what circumstance they would pass productivity gains on to Renault ("*Y* [Pilkington] *– if they do not get price correction on parts they lose*[558] *money on, there will not be any productivity. Similar to X* [Saint-Gobain]. *OK –1% but if prices are corrected. Year 2002 will be zero.*").[559]

(346) Finally, the three competitors intended to coordinate their pricing strategy vis-à-vis Fiat. Saint-Gobain was informing the others about price increases for various glazing parts of five Fiat models, which they wanted to ask from Fiat "*equivalent to about 3-4% of total X* [Saint-Gobain] *turnover*" with Fiat in order to enable the others to "cover" or to allow them to equally ask for a price increase since all main suppliers supplied one or more Fiat cars.[560]

(347) The notes taken at that meeting give a good example of how the three competitors wanted to manage any countermeasures by Fiat resulting in a shift of orders from one glass manufacturer to the other. Since Saint-Gobain was asking for a price increase on several parts of the Alfa Romeo 147 but only for one part of the Stilo "*Pilkington has moved price reduction* […] *from 147 → Stilo*".[561] So in the event that Pilkington had to commit to a price reduction, it would do this on the Stilo and not on the 147 Alfa Romeo in order to reduce the impact on Saint-Gobain.

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556 See […].
557 See […].
558 See page 11823, in the original handwritten notes it is spelled "loose".
559 See […].
560 See […].
561 *Ibidem.*

(348) With regard to the Punto, "*Pilkington will ask a price increase to avoid change of market share from X → Y → Z*".[562] In other words if Saint-Gobain wanted to raise prices on the back screen of the new Punto, it was expected that Fiat would immediately request Pilkington to supply 100% of the back screen or rear window of the 5-door as they already supplied the 5-door model as the second supplier, and AGC to supply 100% of the back screen on the 3-door as they already supplied the 3-door. In order to avoid this shift it was agreed that Pilkington and AGC would then request from Fiat a minimum price of EUR 12.80 or 12.90 per piece which also appeared to satisfy Saint-Gobain.

(349) In its response to the Statement of Objections Pilkington argued that the allegations concerning this meeting contain no specific illegality and there is no evidence that the discussions produced any anti-competitive effects. Pilkington nevertheless admitted its presence in this meeting and stated, concerning the discussions held, that "*such discussions between competitors should not take place*"[563]. In relation to the circumstance that Pilkington wanted to keep the backlights of the 206 model, Pilkington replied that it would be only a unilateral expression of desire, but in any case Mr […] notes are too vague to support this conclusion.

(350) The Commission observes that Pilkington has admitted that it was present at this meeting and that this kind of discussion "*should not take place*" under any circumstances. Furthermore, the other participants took account, or were able to take account, of the information provided by Pilkington, and therefore adapted, or could have adapted, their conduct on the market in breach of the competition law rules. In any event the Commission considers that most often the notes in question are not vague but report in detail on the discussions which took place at this meeting. For those notes which seem to be vague, the explanations given by AGC are more credible than those of Pilkington. In view of this the Commission does not change its conclusions on the unlawful nature of this meeting.

(351) A further trilateral meeting is likely to have taken place in November 2001 in Paris between Mr […] of Saint-Gobain, Mr […] of Pilkington and Mr […] of AGC, during which commercially sensitive information on prices and tooling costs was exchanged in view of the request for quotations and intended allocation of contracts for the following PSA models: the C3, the Xsara, the Xsara Picasso and the 307.[564] With regard to the backlights ("BL") of the Peugeot 206, Pilkington asked Saint-Gobain and AGC that, if asked to quote, they should claim to have no capacity ("*BL – 206 Asked to quote – no capacity*").[565]

(352) In its response to the Statement of Objections Pilkington argued that the alleged discussions on the intended allocations of contracts in relation to the models mentioned contain nothing illegal and are contradicted by the fact that most of these contracts were already awarded at the time of the

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562 *Ibidem*.

563 See page 102 of Pilkington's response to the Statement of Objections.

564 See […].

565 See […] and recital (344).

alleged meeting. Nonetheless, Pilkington admitted that "*such discussions between competitors should not take place*"[566].

(353) The Commission disagrees with Pilkington's opinion that this exchange of information is legal considering the type of information exchanged: current and future prices were in fact disclosed in great detail, and every participant could use this information to adapt its conduct on the market in breach of the competition law rules. Furthermore, at this meeting Pilkington made suggestions as to the line of conduct that the other competitors should take, reminding them that they should claim not to have capacity. This behaviour is clearly anti-competitive, as admitted by Pilkington itself in its written response to the Statement of Objections. In the light of this, the Commission does not change its conclusions on the unlawful nature of this meeting.

(354) A further contact between AGC and Pilkington concerning BMW was made on 6 November 2001, either in form of a meeting or of a telephone call, during which sensitive price information was exchanged. As can be seen from the handwritten notes of Mr […], there is a table comparing prices of AGC and Pilkington for the E61, the upcoming new BMW 5 series station wagon, for which full serial production started in 2003.[567]

(355) In its written response to the Statement of Objections[568] Pilkington argued that there is no basis to conclude that the relevant notes of Mr […] record any provision of data by Pilkington to AGC. In fact, according to Pilkington, the mere presence of the letter "Y", meaning Pilkington, on the page is no proof that the figures were provided by Pilkington, but they may have been provided by BMW directly.

(356) The Commission does not find Pilkington's explanations convincing. It is highly unlikely that these figures were provided by BMW directly. The surrounding other data noted down on the pages before and after refer to detailed information which was exchanged among the competitors. Therefore the explanation given by AGC seems to be the most likely one.

(357) The informant provided handwritten minutes of a meeting on 15 November 2001 at the Arabella Sheraton Hotel at the Düsseldorf airport between, according to the informant, Mr […] of Pilkington and Mr […] of Saint-Gobain.[569] These handwritten minutes comprise four pages, all on paper bearing the Arabella Sheraton hotel header and footer. As can be seen from the first page, the competitors started their discussions by reviewing the "*current situation*"[570] regarding who supplied what modelin Germany, which served as a basis for the intended allocation of upcoming contracts.

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566 See pages 102-103 of Pilkington's response to the Statement of Objections.

567 See […].

568 See page 163 of Pilkington's written response to the Statement of Objections.

569 See p. 44-47, handwritten minutes of the meeting of 15.11.2001 at the Arabella Sheraton Düsseldorf Airport Hotel between Mr […] of Pilkington and Mr […] of Saint-Gobain (notes taken by Mr […]). See handwritten notes copied in Mr […]'s office which match, documents labelled AR3, p. 4999-5000 and AR6, p. 5030-5039, see also […] Article 18 response of […], answers to questions 63 and 64, p. 32, p. 45580-45581.

570 "*Aktuelle Situation*" in the original German, see page 44 of the file.

The accounts concerned were Audi, BMW, DaimlerChrysler, Ford and Volkswagen.

(358) The following page of the document submitted by the informant evidences how the competitors exchanged price information in relation to these car manufacturers as well as the intended allocation of specific models. For instance, with regard to the new Volkswagen Golf (A5), the two competitors agreed to keep the same allocation as for the current model, the A4.[571]

(359) The last two pages deal with BMW only. The third page contains the intended allocation of the contracts for the X3 and X5 SUV models, the upcoming new 5 series, the new series 1 and the new series 3. For instance, with regard to the upcoming new series 3 (code name E90) it was estimated that about 350 000 cars would be built and that this should be shared equally between Saint-Gobain, Pilkington and AGC ("*E90 350.000 car sets → everyone 150.000*"). Also the word compensation can be found in the minutes in connection with Pilkington. The fourth page contains a detailed comparison of prices for all glazing parts of the upcoming BMW X3 model and the new series 3 (Code name E90).[572]

(360) In its written response to the Statement of Objections[573] Pilkington argued that the document relied on by the Commission is too vague, unclear and cannot serve for any purposes since it is not corroborated. The model indicated, the A5, is not defined and can only be assumed to be the A5 series of the Golf model in general, whereas Pilkington has shown that the allocation of the A5 series varied considerably from the A4 series, which, however, according to the notes, was supposed to be the basis for the allocation of contracts. As regards the various BMW models, the notes are again too sketchy and not corroborated.

(361) Pilkington's argument cannot be accepted. The model discussed, the A5, is clearly indicated and there is no doubt that it was about the new Volkswagen Golf. Furthermore, the information on this meeting was provided to the Commission by an independent source, which has shown to be reliable, and fits into a consistent body of evidence supplied by AGC. Therefore the Commission maintains its conclusions as set out in the Statement of Objections.

(362) Between 19 November and 12 December 2001 there were several telephone calls and meetings between representatives of Soliver, in particular Mr […], and of AGC (Mr […] and Mr […]). Notes of these telephone calls and meetings were taken by Mr […][574], then Soliver's […], which were found by the Commission's inspectors in Mr […]'s office.[575]

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571 "*Aufteilung wie A4*" in the original German. See p. 44-47, in particular p.45. See handwritten minutes of the meeting of 15 November 2001. See handwritten notes copied in Mr […]'s office which match, documents labelled AR3, p. 4999-5000 and AR6, p. 5030-5039.

572 "*jeder 150.000*" in the original German. See p. 44-47.

573 See page 188 of Pilkington's response to the Statement of Objections.

574 See answer of […] to Commission's questionnaire of 5 May 2006, p. 34554.

575 See document labelled DV15, Tome 3, p. 622-627.

As an introductory remark Mr […], states his favourable opinion to have a "*concertation*" just as AGC has with Saint-Gobain and Pilkington.[576] The main topic of the calls was to allocate contracts of the customer Fiat and its subsidiary IVECO. To this extent Soliver proposed to Mr […] to withdraw from Fiat in exchange for AGC withdrawing from Iveco.[577] It was agreed that Soliver's representative should meet Mr […] on 4 December 2001 to discuss the matter further.[578]

(363) The meeting between Mr […] and Mr […] took place as scheduled. The notes by Mr […] of Soliver summarise the meeting as follows:

- "*He* […] *met with Mr* […] *of Splintex; the contact was good: a discussion based on confidence. Mr* […] *knows well the details of the Italian market and the Iveco market is secondary to him: it amounts to 70 000 carsets per year out of 4 000 000 produced by Splintex. They did a price comparison Splintex would be 2% below Soliver (to be checked Mr* […]*, did he have the correct figures?).*

- Iveco *would have asked Mr* […] *taking orders from* […]*) -1% on prices in exchange for more orders.* […] *tried to motivate Mr* […] *regarding a 5% price increase on Iveco. Soliver having asked 2% and 3%.*

- *In relation to windshields Splintex supplies 50% of the S2000, Soliver 50%. This windshield does not interest Splintex. Soliver can have it (but at low prices). Splintex does not supply the lorries. The leader is Vetrosud.* […] *confirms that Saint-Gobain has a majority holding of Vetrosud. It is therefore necessary to speak to Mr* […] [Saint-Gobain]. *Mr* […] *knows Mr* […] *and has informed him of the contacts between Splintex and Soliver.*

- *Mr* […] *will look further into the Italian market with Mr* […] *and contact* […] *again by telephone on Monday 10*".[579]

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576 See document DV 15, page 1, Tome 3, p. 622. The original text reads as follows: «*Mr* […] *est favourable à une concertation Splintex-Soliver, comme ils ont des concertations avec Saint-Gobain et Pilkington (Mr.* […])».

577 See document DV 15, page 1, Tome 3, p. 622. The original text reads as follows: «*Soliver ne se met pas en concurrence avec Splintex chez Fiat; en échange, Splintex augmente le prix des PB* [Parebrise] *chez Iveco et permet ainsi à Soliver d'augmenter ses prix et sa part de marché*.»

578 See document DV 15, page 2, Tome 3, p. 623: «*Objet principal de cette réunion: Soliver laisse le champ libre à Splintex chez Fiat, en contrepartie, Splintex soutient Soliver* […] *chez Iveco*.»

579 See document DV 15, page 5, Tome 3, p. 626. The original version of the text reads as follows in French: - *"Il a bien rencontré M* […] *de Splintex; le contact a été bon: une discussion en confiance. M* […] *connaît bien les détails du marché italien, et le marché IVECO est pour lui secondaire : c'est 70 000 garnitures (set) par an sur 4 000 000 que produits Splintex. Ils ont fait une comparaison de prix sur des pièces Splintex serait 2% en dessous de Soliver (à vérifier M* […]*, avait-il les bons chiffres?). - Iveco aurait demandé à M* […] *(commercial Splintex en* […] *sous les ordres de* […]*) -1 % sur les prix en échange de plus de commande.* […] *a cherché à motiver M.* […] *sur une augmentation de prix de 5% chez Iveco. Soliver ayant demandé 2 et 3%. - Au sujet des parebrise Splintex fournit 50% du S2000, Soliver 50%. Ce parebrise n'intéresse pas Splintex, Soliver peut tout prendre (mais prix bas). Splintex ne fournit pas les camions c'est Vetrosud le leader.* […] *confirme que Saint-Gobain a une participation majoritaire chez Vetrosud. Il faudrait donc parler avec M* […]*. M* […] *connaît M* […] *et l'a informé des contacts Splintex Soliver. M* […] *va approfondir le marché italien de Splintex avec M* […] *et reprend contact par téléphone avec* […] *lundi 10.»*

(364) These notes not only demonstrate an on-going coordination between the two companies to allocate customers but also the existing contacts between AGC and Saint-Gobain.

(365) In its written response to the Statement of Objections Soliver admitted that "*a number of contacts were made by representatives of Soliver with AGC concerning deliveries to Fiat and Iveco*"[580]. However, Soliver submits, they have to be seen as an attempt to get rid of the contracts with Fiat which had become loss-making after the price increase of float glass. Soliver submits that it was entirely unaware of the scope of the infringement set up between the Big three. This appears firstly from the fact that Mr […] of AGC had to explain to Soliver that AGC held consultations with Saint-Gobain and Pilkington ("*Mr* […] *is in favour of a concertation Splintex-Soliver, as they have concertations with Saint-Gobain and Pilkington*". Furthermore, Mr […] also apparently clarified that, within AGC, the person in charge of these consultations was Mr […]. Had Soliver already been aware of these contacts, Mr […] would not have needed to convey this information to Soliver[581].

(366) The Commission observes that Soliver admitted to the series of contacts which occurred in late 2001 and […][582]. Even if it tried to find out a commercial justification for these contacts, they have to be classified among the contacts which are contrary to Article 81 of the Treaty by object. The Commission therefore considers […] the illegal nature of the contacts which occurred in November-December 2001 and are described in recitals (362)-(363).

(367) On 29 November 2001, Saint-Gobain, Pilkington and AGC held a meeting on the fringe of an official meeting at the Assovetro Trade Association premises in Rome. The three competitors discussed the allocation of the contracts for the […] and the issue of annual price reductions. This meeting was followed by a meeting in the afternoon at the Hilton Hotel of the Rome Fiumicino airport. Participants in the afternoon meeting were, […] Mr […] from AGC, Mr […] from Saint-Gobain and Mr […] from Pilkington.[583] Saint-Gobain and Pilkington exchanged the prices they intended to quote for the various parts of the […]. From the notes taken, it is apparent that Saint-Gobain was quoting higher prices for all but one piece in order to "cover" Pilkington. In addition, Pilkington reported the state of negotiations with […] on the issue of annual price reductions as requested by […]. Pilkington informed […] that if they wished to obtain a price reduction from Pilkington they needed to make a price correction on those parts on which Pilkington was losing money. Pilkington was requesting a 70% share in the […]in return for three times a price reduction of 1.5% per year ("*Y* [Pilkington] *said to […]for any productivity […] must increase loss-*

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580 See point 79 of Soliver's response to the Statement of Objections. The original Dutch text reads as follows: "*Soliver bevestigt dat er vanaaf eind november 2001 een antaal contacten zijn geweest van vertegenwoordigers van Soliver met AGC en dit met betrekking tot leveringen aan Fiat en Iveco*[…]".

581 See points 79-82 of Soliver's response to the Statement of Objections.

582 See point 80 of Soliver's response to the Statement of Objections. The original Dutch text reads as follows: "[…]".

583 See […].

making prices. […] is a condition to above + fix share of 70% of […]for 1.5% 1.5% 1.5%. […] said no – only 1.5% reduction ONCE, which means –1% including loss-making parts in portfolio").[584]

(368) At this meeting the Big three also exchanged price information concerning the customer Fiat and considered two scenarios in the event that Saint-Gobain were to request a price increase. The first one was that Fiat would not accept the increase by Saint-Gobain [X] and the status quo would be maintained. The second one was that Fiat would accept the increase while shifting some volume to the other suppliers. In the event that Pilkington was asked to take over the entire volume of the Stilo and the 147, it was envisaged that Pilkington [Y] should then first claim not to have capacity to do so ("*After X increase, Y has been asked to take 100% of Stilo + 147 Response* [is:] *NOT possible*").[585] The possibility was then considered that Pilkington would subsequently inform Fiat that it would only be willing to dedicate capacity to Fiat if prices for Pilkington supplies of the 147 and the 3D Stilo were improved. If Fiat then turned to AGC, the intention was that AGC would follow Pilkington's prices. With regard to the Fiat Punto it was envisaged that in the event that Fiat requested AGC to supply the Fiat Punto, AGC would respond that they would be willing to increase their supplies only if Fiat accepted a price increase on the backlights, provided that AGC were then awarded 100% of the 3D Stilo and the windscreens that were previously supplied by Saint-Gobain, in other words a larger volume for a smaller price increase.[586]

(369) In its written response to the Statement of Objections[587] Pilkington contends that the disclosure of pricing data was not made to engage in a cover pricing arrangement. At most, the notes evidence a disclosure of pricing data, but the discussions linked to that disclosure "*are matters of pure conjecture*"[588].

(370) Furthermore, Pilkington argued that the handwritten notes referred to Fiat at this meeting do record events which occurred in the past and in any case the Statement of Objections would acknowledge that the discussions were nothing more than contemplations by the parties of possible response scenarios by Fiat, but there are no allegations of the parties having reached any actual agreement or understanding.

(371) The Commission points out, firstly, that the information provided by the notes in question is, despite Pilkington's assertions, very clear and detailed and can easily be referred to as a possible pricing arrangement. […] these prices were exchanged in order to allow the competitors which were not intended to be awarded the contract to 'cover' the winning one. Pilkington commented that there could be another explanation ('*conjecture*') but did not submit an alternative explanation. In view of this the Commission

584 See […].
585 See […].
586 See […].
587 See page 138 of Pilkington's response to the Statement of Objections.
588 See page 127 of Pilkington's response to the Statement of Objections.

maintains its conclusions on the unlawful nature and content of this meeting.

(372) Secondly, as regards the discussions about Fiat, the Commission points out that the scenario described by Mr […] notes records a behaviour due to be adopted vis-à-vis Fiat following a price increase communicated by Saint-Gobain and agreed by the competitors. The quotation contested by Pilkington, "*After X increase, Y has been asked to take 100% of Stilo + 147 Response NOT possible*", is to be considered a quick annotation by Mr […] of what was said during the talks and must, in the Commission's view, be read in the following fashion: Once Saint-Gobain has increased the price and Pilkington has possibly been asked to take the 100% of the Stilo, Pilkington should answer that it has no capacity. The following table is a recording of who should take action for what model and all these actions had to be taken in the future. For these reasons, the Commission confirms its conclusions on the unlawful nature of this meeting.

(373) On 6 December 2001, a further trilateral meeting took place on the fringe of an official GEPVP meeting.[589] Attendants at the GEPVP meeting were Mr […] and Mr […] from AGC, Mr […] from Pilkington and Mr […] and Mr […] from Saint-Gobain.[590] The handwritten notes taken at that meeting by Mr […], which were copied by the Commission during the February 2005 inspection, report on their first page the official GEPVP meeting and follow the topics of the official agenda, but on the second page there is an exchange of market data that took place between competitors after the official meeting had ended.[591] Since Mr […] handwritten notes of that day correspond almost word by word to those of Mr […] with regard to the discussion between the competitors with regard to market shares, it can be assumed that also the other data noted by Mr […] stems from that same unofficial meeting.[592] According to Mr […] notes, the competitors discussed a possible price increase towards the GM/Fiat models which were loss-making[593]. This proposal was taken up in more detail at the following meeting at the end of the year (see recital (376). GM and FIAT were considered to be a single account due to […].

(374) In its written response to the Statement of Objections[594] Pilkington argued that no overall understanding as regards stabilisation of market shares has been established at this meeting and at the Oral Hearing stated that AGC had not confirmed that the discussions concerned a possible price increase for Fiat/GM.

(375) The Commission responds that Pilkington did not deny that an unofficial meeting took place after the official GEPVP meeting, and that it was present at the latter meeting as well. Even though there is to clear proof that

589 See […].

590 See […] Article 18 response, list of attendants of meeting on 6 December 2001, p. 14684.

591 See document labelled EF7, p. 663-665, containing handwritten notes by Mr […] from both the official meeting and from the meeting which took place afterwards between competitors.

592 See also document labelled EF7, p. 663-665 and […].

593 See document labelled EF7, p. 664, and […].

594 See page 178 of Pilkington's response to the Statement of Objections.

an agreement was reached at this meeting, the relevant handwritten notes referring to this contact clearly state that discussions on market shares for the next 3 years as well as that some considerations on pricing policy took place among the competitors. For instance, the sentence "*stop financing losing parts with winning parts*" referred to several accounts, including Fiat/GM which allegedly had "*very low or negative margin*"[595], clearly indicates that the competitors intended to identify which glazing parts were under-priced. Therefore, the Commission maintains its conclusion that possible price increases ("*started actions*") for at least four accounts, including Fiat and GM, were considered at this meeting.

(376) Another trilateral meeting between Saint-Gobain, Pilkington and AGC took place at the end of year 2001 during which the competitors continued to exchange price information in relation to glass parts to be supplied to the customer Fiat.[596] Participants were Mr […] from Pilkington, Mr […] from Saint-Gobain and Mr […] from AGC. The meeting took place either in the Charles de Gaulle airport Sheraton Hotel outside Paris or in Rome at the premises of the Glass Trade Association, Assovetro. According to the handwritten notes of Mr […], Saint-Gobain reported back to its competitors on what it had asked Fiat in terms of price increases and Fiat's reactions thereto. These notes include comments by Pilkington and AGC.

(377) As can be seen from the notes taken by Mr […] at this meeting, Saint-Gobain attempted a price increase of 4% in revenues with Fiat as suggested already at the meeting on 29 October 2001.[597] Otherwise supplies would be stopped within one month. However, Fiat was only willing to accept a lump sum of 1%.

(378) Pilkington repeated its policy towards Fiat ("*Has always refused to give further capacity to Fiat (not available). Only possibility is with a price increase of about 7-8%*"). In other words Pilkington would not supply Fiat on the stated grounds of lack of capacity unless Fiat would make it worthwhile for Pilkington through a price increase. Lastly, also AGC told its competitors what kind of price increase it had asked for.[598]

(379) Moreover, at this trilateral meeting at the end of 2001, detailed price information was exchanged with regard to the Alfa 147, both the 3D and the 5D-models, as well as the Stilo 5D and the Stilo station wagon.[599] It should be noted that several of the Saint-Gobain prices mentioned in this document are the same as those exchanged at the meeting of 29 October 2001 (see recital (346)). If all these price increase were accepted by Fiat the turnover of Saint-Gobain would have increased by the desired 4.1 %.

(380) In its written response to the Statement of Objections, after having admitted that there appears to be "*some level of mutual reporting*" at this meeting, Pilkington contested the Commission's conclusion that such disclosures

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595 See document labelled EF7, p. 664.
596 See […].
597 See […].
598 See […].
599 See […].

were unlawful in nature and in particular the cataloguing of this meeting among those concerning price coordination. Furthermore, Pilkington stated that "*the line in question may refer to some discussion concerning a price increase to FIAT and/or GM*" but changed its mind during the hearing where it stated that the Commission's conclusion is pure speculation […].

(381) The Commission points out, firstly, that Pilkington admitted its presence as well as an exchange of commercially sensitive information at this meeting. Secondly, as this disclosure regarded possible price increases vis-à-vis particular customers, in this case Fiat, and as it referred to a future scenario, the Commission considers this exchange of commercially sensitive information as unlawful. The competitors present at the meeting exploited or were in a position to exploit this information to adapt their behaviour on the market in that respect, for instance by covering the party increasing the price to force the customer concerned to accept the new price. For these reasons, the Commission does not change its conclusions on the unlawful nature of this meeting.

4.4.5. 2002

4.4.5.1. Summary

(382) In 2002 the competitors Pilkington, Saint-Gobain and AGC met trilaterally four times on 5 February, 30 April, around April/May and on 3 September and contacted each other on various occasions. Saint-Gobain contacted AGC six times, around mid-February, on 7 March, 30 April, between 3 and 18 September, in late September and in autumn 2002 and had one contact with Soliver on 29 May.

(383) During these meetings and contacts, the competitors exchanged price information as well as other commercially sensitive information with a view to allocating the supplies to the following customers: PSA (5 February), […] (5 February), Nissan (3 September), […] (around April/May 2002, […], 29 May, 3 September, in late September and in autumn 2002), […] (30 April), General Motors (29 May), Fiat (30 April, 29 May and 3 September) and Ford (in February and in September).

4.4.5.2. Chronological description of the contacts

(384) A meeting was held on 5 February 2002 between the Big three at the premises of the Assovetro association in Rome. The participants were Mr […] of Saint-Gobain, Mr […] of Pilkington and Mr […] of AGC.[600] At this meeting the competitors exchanged price and other commercially sensitive information with a view to sharing the new Peugeot 207 model (project code name A7) conceived by Peugeot to replace the old 206 model (the T1).Peugeot applied a multiple sourcing strategy for the windscreen of the 206, a high volume model, as follows: AGC [...], Pilkington [...] and Guardian [...]; the sidelights were supplied by Saint-Gobain [...] and AGC [...], and the backlights were supplied by Saint-Gobain [...] and Pilkington

600 See […].

[...].[601] For the new model 207, the Big three wanted to obtain the supply percentage of Guardian ("*remove GRD*") and allocate supplies to the new 207 model on a 40/20/40 basis among themselves, as can be seen from the notes taken of that meeting.[602] According to these notes, Saint-Gobain was due to get 400 000 windscreens and 2 600 000 sidelights, Pilkington 500 000 backlights and AGC was to get 400 000 windscreens, 600 000 sidelights and 300 000 backlights. This distribution would make a 40/20/40 allocation on the basis that one windscreen was worth one backlight and six sidelights.[603]

(385) There were separate requests for quotation from Peugeot for the 207 model for the entire carset in April 2003, then for sidelights and backlights in May 2003, and for the windscreen in February 2004. The exchange of information at the meeting in February 2002 with a view to splitting the supply of the new 207 model took place approximately one year before the first request for quotation was made, that is to say during the development phase of the model. Ultimately, the competitors succeeded in obtaining Guardian's percentage of supply; however, Saint-Gobain got 55% of windscreens and all the sidelights while Pilkington supplied the remaining 45% of the windscreen and 100% of the backlights.[604] AGC was not awarded any supply for this model. At the same meeting the Peugeot 107 model (code name "B ZERO") was discussed as well. It was intended that AGC would get windscreen and backlights whereas the sidelights were still not agreed on. In the end, however, AGC obtained not only the supply for windscreen and backlights but also for the sidelights.[605]

(386) At this meeting the competitors also exchanged information with a view to sharing the new Renault Clio (code name C85) as well as to compensating each other for the losses on the Nissan Primera and the Renault Twingo and Mégane models. As can be seen from the handwritten notes, Pilkington was asking Saint-Gobain and AGC for compensation for the "lost" of 360 000 carsets on the Renault models Twingo and Mégane as well as on the Nissan Primera: "*Y lost ≈150,000 Primera Y lost ≈90,000 Megane Y asking for ≈360,000 compensation for Renault*"[606]. AGC told its competitors that it had lost 300 000 carsets for the Mégane. The calculations were made on the basis of a comparison of the originally intended allocation and the actual supply situation for these models as set out in a table in the handwritten notes. Eventually the three competitors envisaged a new allocation whereby Pilkington would get 250 000 carsets of the Clio and AGC 350 000 of the Clio as compensation.[607]

(387) In its written response to the Statement of Objections[608] Pilkington underlined that the discussions at this meeting involved proposals only,

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601 See answer of [...] to Article 18 request for information of 9 March 2006, page 8, p. 16904.
602 See […].
603 See […].
604 See Article 18 response […], p. 35409.
605 See […].
606 See […].
607 See […].
608 See pages 104-105 of Pilkington's response to the Statement of Objections.

which did not have any effect in practice. Moreover, as regards the Peugeot 107, there is no allegation that Pilkington was a party to the alleged discussions proposing an allocation between AGC and Saint-Gobain. Concerning Renault, Pilkington expressed doubts about whether the comments attributed to it in the notes were in fact made by Pilkington. It argued that it is rather unlikely that the statements relating to the Modus would represent a Pilkington view. The same is said for the Primera and Mégane models.

(388) The Commission notes, firstly, that Pilkington did not deny its participation in this meeting, or deny the discussions which took place during this meeting. In addition, Saint-Gobain has not contested the factual description of this meeting. As regards the new Peugeot 207, the notes record in a very clear manner what was the allocation intended between the three competitors in order to achieve a 40/20/40 allocation among themselves. Regarding the Peugeot 107 model, the fact that the contracts were subsequently allocated to AGC only does not exclude that this was the consequence of the allocation agreement achieved between the three competitors. Pilkington then argues that it is unlikely that agreements or understandings would have been concluded a substantial period of time before the RFQs or even the awarding of contracts. In reality, however, the discussions on the Peugeot 207 took place at a time when the three competitors could not know when exactly the RFQs would be issued. […][609], it was believed that […] were believed to be built on current lines. Therefore it is plausible that the competitors prepared their offers quite in advance, given that a popular model like the Peugeot 207 would have prompted big 'figures' and absorbed a not negligible part of the whole production capacity. Finally, as regards the alleged unlikelihood that the statements attributed to Pilkington in the relevant notes would represent a Pilkington view, the Commission notes that Pilkington just tried to call into question the Commission's conclusions. However, no alternative explanation was submitted by Pilkington which limited itself to casting doubts which are not underpinned by any other logical explanation. In the absence of such an alternative explanation, the Commission confirms its analysis and conclusions in relation to the unlawful nature of this meeting including the underlying documentation and the models discussed.

(389) Around mid-February 2002, Mr […] of AGC called Mr […] of Saint-Gobain and exchanged price and other sensitive information for the […] model. The telephone call related to the full service supply, the supply integration principle, for the Focus. From the handwritten notes it can be seen that Saint-Gobain's price for the Full Service Supply ("FSS") for the Focus was EUR 1.6 million as well as which services were to be included in the FSS package. These costs were to be included either in the piece price or split 50/50 in other words to be included 50% in the piece price and 50% cash. It was moreover agreed that the full service supply principle did not include charges for prototypes, which were to be 15 times the mass

609 See page 18097.

production price per part and with the minimum purchase of 20 to 25 parts.[610]

(390) On 7 March 2002 an internal discussion between Mr […] at AGC, and Mr […] of AGC took place, on what to do with the Opel Corsa and the Opel Vectra business. The notes taken during this discussion are relevant as they report Saint-Gobain's proposed future prices on both models.[611]

(391) On 30 April 2002 a trilateral meeting took place at the Charles de Gaulle Sheraton Hotel outside Paris, between Mr […] of Saint-Gobain, Mr […] and possibly Mr […] of Pilkington and Mr […] of AGC.[612]

(392) At this meeting the competitors exchanged price information and other customer specific information for the Fiat and GM accounts. Saint-Gobain, who was keen to keep its supply share for Fiat unchanged, informed the other participants that it would discuss its share of the Fiat account with Fiat.[613]

(393) In another contact of 30 April 2002 likely during a telephone conversation between Saint-Gobain and AGC, the supply situation at […] and […] was discussed.

(394) The notes of Mr […] referring to this contact list the supplies of carglass for the […] of the […]. Previously Pilkington had supplied the […] and Saint-Gobain the […]. The [...] was a loss-making contract for Pilkington as it was technically very difficult. Pilkington was therefore apparently happy to get rid of it. The proposal made between the competitors was to share the […] and the […] 50/50 between Saint-Gobain [X] and Pilkington [Y]: "*X was supposed to get […] but not happy. X push for 50% 50% […] with Y*". As Saint-Gobain had difficulties in development, […] invited PPG to quote.[614]

(395) Another subject of the meeting was how to allocate the supply contracts for the new […].[615] According to the notes taken by Mr […], the new […] was to be shared between Saint-Gobain and Pilkington. Saint-Gobain [X] was to get 100% of the […] sidelights ("*SL 100% X. […] and […] was given to X with […] as incentive*"), probably in exchange for supplying the […], both of which were technically difficult with short production runs and therefore not popular with automotive glass suppliers.[616]

(396) Concerning the alleged contacts on 30 April 2002, in its written response to the Statement of Objections[617] Pilkington disputes that it was present at the meeting allegedly held in Paris or at any contact. The relevant notes of Mr […] contain no mention of Pilkington. It is probable, according to

610 See […].
611 See […].
612 See […].
613 See […].
614 See […].
615 See […].
616 See […].
617 See pages 140 and 166-67 of Pilkington's response to the Statement of Objections.

Pilkington, that the notes refer to the same contact between AGC and Saint-Gobain, which it claims took place by telephone. As to the content of the discussion involving the account […], according to Pilkington, it was about proposals for "covering" which never crystallised into any actual agreement. At most, one party may have been left with an "impression" that something was agreed (in this case Saint-Gobain). If there was an understanding, which Pilkington denies, one of the parties cheated. Finally, at the very least, the agreement possibly reached failed to produce its desired effects.

(397) The Commission responds as follows. Pilkington is mentioned in the note through the usual abbreviation, the letter Y. In addition to the letter Y there is Pilkington's position, […] as follows: "*Pilkington had supplied the […] and Saint-Gobain the […]. (…) The […] was a loss-making contract for Pilkington as it was technically very difficult*".[618] The level of information exchanged makes it plausible that this information was delivered directly by Pilkington during the contact or surrounding it. […] two contacts for the same day. Nothing precludes that two contacts may have occurred on the same day. The Commission considers in fact plausible that two contacts took place on 30 April 2002 based on the submissions of the leniency applicant. Mr […] notes dated 30 April 2002 illustrate that Pilkington was indeed involved in the discussion about how to share the […] and the […] models. In particular, Pilkington itself admits that proposals for "covering" were made. The fact that the parties to the agreement may have cheated or that the car manufacturers may have made the implementation of the agreements impossible does not mean that the behaviour described is not unlawful in nature. The Commission repeats that for there being an agreement it is sufficient to verify the presence of the joint intention to behave in a certain way. Reference is made to section 5.3.2.1 and to the case-law cited therein.

(398) A bilateral meeting was held around April/May 2002 between Mr […] from Saint-Gobain and Mr […] from AGC. At this meeting the competitors agreed on the intended allocation of the new VW Passat[619].

(399) The date for the first quotation for the Passat was 1 January 2003 and the last quotation was submitted in March 2003. The final sourcing date, in other words the award date, was April 2003 and the start of production date was the beginning of 2005.[620]

(400) According to the notes taken at that meeting[621], the competitors intended to allocate supply of the new Passat among Saint-Gobain, AGC and Soliver. On the basis of the supply situation for the then current Passat, both Saint-Gobain and AGC proposed a plan for the allocation of the new model. Saint-Gobain suggested that AGC obtain, for the first time, 50% of the windscreens for the new Passat. This was in exchange for AGC's failure to obtain part of the Seat business.

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618 See […].
619 See […].
620 See answer of […] to questionnaire of 3 March 2006, annex 3a, p. 15969.
621 See […].

(401) This is thus a further illustration of the type of compensation mechanism used by the competitors in order to try to maintain a certain market share stability. AGC proposed to obtain 100% of the sidelights due to the loss of Golf sidelights. It also demonstrates how the compensation mechanism worked in order to maintain the market shares.[622]

(402) On 29 May 2002, the handwritten notes taken during a telephone conversation between Mr […] and Mr […] of Saint-Gobain and Mr […] of Soliver and copied by the Commission at the premises of Soliver[623] demonstrate that there was the intention of sharing the supply for the new Volkswagen Passat between not only the Big three but also Soliver. According to that document, Mr […] and Mr […] suggested to Soliver that they should have a meeting in order to discuss a "*cooperation*" for the supplies of the new Passat.[624] This offer was made as a compensation for Soliver not to interfere with Saint-Gobain's offer for theLancia Lybra.

(403) The two competitors also discussed how to allocate carglass supplies for the Opel Frontera between themselves. According to the document, Mr […] and Mr […] suggested to Soliver that they should have a meeting in order to discuss "*cooperation*" for the supplies of the Frontera.[625] This offer was made as a compensation for Soliver not to interfere with Saint-Gobain's offer for the Lancia Lybra.[626]

(404) Moreover, the two competitors discussed how to allocate supplies to Fiat between themselves. According to the document Mr […] and Mr […] complained that Soliver had not respected the agreement not to undercut Saint-Gobain with respect to the Lancia Lybra[627] so as to leave that model to Saint-Gobain. From the notes it appears that the sales force of Soliver in Italy was not aware of this arrangement which has been concluded between Saint-Gobain and a higher ranking employee of Soliver.[628]

(405) This document furthermore shows that Soliver was aware of the illegal nature of the conversation, as at the bottom of the page it is stated that the document must be destroyed to make the discussion not traceable: "*Please do not keep this document, conversation must not be traceable*".[629]

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622 See […].

623 See reference to the Lancia Lybra, telephone conversation on 29 May 2002 between Mr […] and Mr […], document labelled PDR11, p. 460.

624 See document PDR11, p. 460. In the original Dutch it is spoken about "*samenwerking*".

625 See document PDR11, p. 460.

626 See reference to the Lancia Lybra telephone conversation above on 29 May 2002 between Mr […] and Mr […], see document PDR11, p. 460.

627 See document labelled PDR11, p. 460. The original Dutch text reads as follows: "*Ik* […] *dacht dat we een duidelijke afspraak hadden betreffende beglazing en dat geen van beiden absurde prijzen afgeven en zeker niet op verworven projekten van de andere*".

628 See document labelled PDR11, p. 460: The original Dutch text reads as follows "*hij* […] *vraagt of ik hiervan op de hoogte ben) (neen, vermits* […] *deze markt behandelt)*".

629 See document labelled PDR11, p. 460: "*Gelieve dit document niet te bewaren, samenspraak mag niet traceerbaar zijn*" in the original Dutch.

(406) In its written response to the Statement of Objections[630] Soliver admitted that in 2002 and early 2003 "*a limited number of telephone contacts took place between Soliver employees and representatives of AGC and Saint-Gobain*" with regard to the new Volkswagen Passat model. Regarding the aforementioned contact of 29 May 2002, Soliver acknowledged that "*this contact was inappropriate*"[631]. Even though Soliver considers that for this contract it possibly did gain some advantage from the existence of the cartel put in place by the Big three, this, however, does not mean that Soliver was aware of the scope and implications of the agreements made by the Big three, let alone that Soliver was party to the continuous and long-lasting cartel between the Big three, which Soliver denies. Soliver submits that it was in a vulnerable position as a result of the sharp increase in the price of float glass which Soliver had to contend with from the beginning of 2001. Soliver argues that this price rise was in all probability the consequence of a prohibited agreement between the Big three.

(407) The Commission notes that Soliver admits participation in this contact, its nature as well as the eventual advantages prompted to it by this contact with Saint-Gobain and points out that if Soliver felt vulnerable and in a weak position vis-à-vis the Big three, instead of entering into negotiations with the competitors, it could have contacted the Commission to make it aware of this particular situation. In the absence of this conduct, the behaviour of Soliver can only be regarded within the existing competition law rules as unlawful.

(408) On 3 September 2002, a meeting took place in Rome at the premises of the trade association Assovetro and participants in this meeting were Mr […] and Mr […] of Pilkington, Mr […], Mr […], Mr […] of Saint-Gobain and Mr […] and Mr […] of AGC.[632] At this meeting, the competitors exchanged detailed pricing information for the upcoming RFQ for the new Fiat Punto (code name 199) in order to allocate the contract. It can be seen from the handwritten notes that the final objective of this price exchange was to increase prices to the new Fiat Punto by 20% to 30% per car set as compared with the previous Punto model (code name 188).[633] Moreover, it was agreed that Saint-Gobain would "cover" AGC and Pilkington who were the incumbent suppliers of the then current Punto, by quoting higher prices.[634] Lastly, the competitors agreed to exchange information regarding their market share evolution of the Fiat account ("*Mkt share evolution - Next time*").

(409) At this meeting AGC and Pilkington exchanged price information in relation to the glazing for the upcoming new Skoda Octavia (Volkswagen

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630 See points 85 seqq. of Soliver's response to the Statement of Objections. In the original Dutch: "*Soliver bevestigt dat in 2002 en begin 2003 een beperkt aantal telefonische contacten hebben plaats gevonden tussen werknemers van Soliver en vertegenwoordigers van AGC en Saint-Gobain*".

631 See points 86 of Soliver's response to the Statement of Objections. The original Dutch text reads as follows: "*Soliver erkent, dat deze contactname ongepast was*".

632 See […].

633 See […].

634 See […].

Group).[635] In particular, the two competitors exchanged price quotes for the windscreen.

(410) Page 8 of the handwritten minutes of Mr […] of AGC records internal notes taken during or immediately after the meeting of 3 September, or at another meeting slightly after 3 September, in relation to the Nissan Primera model. From these notes it can be seen that Saint-Gobain and Pilkington complained about the Nissan Primera contract, which […] had been entirely awarded to AGC. It can also be noted that tensions created by this "casualty" lead the participants to discuss the possibility of "breaking the club" that existed between the three competitors ("*Big complaint from St-Gobain & Pilk*[ington] - *Decision to break club between P* [Pilkington] *& SG* [Saint-Gobain]").[636]

(411) Further handwritten notes containing internal reflections of Mr […] of AGC refer to the sharing of the Nissan Almera model: for instance, AGC was willing to give up 50% of the Nissan Primera business in order to obtain 50% of the Almera business in exchange ("- *we get 50% Almera - we give up 50% of Primera in 2006*").[637]

(412) In its written response to the Statement of Objections Pilkington admitted that the notes "*appear (...) to evidence some detailed level of discussion on possible pricing in relation to the new Fiat Punto*"[638], although it contended that they did not record any actual agreement or understanding in relation to Fiat. On the contrary, according to Pilkington, Saint-Gobain acted competitively and gained a substantial share of supply. Regarding Skoda, Pilkington pointed out that the relevant notes are unclear, even if they possibly evidence a disclosure of price data by Pilkington. Moreover, since this was the last "Club" meeting, after which the "Club" was dissolved, there was no consequence of this meeting in practice.

(413) The Commission points out that Pilkington admits that the discussions at this meeting included "*possible pricing in relation to the* new *Fiat Punto*", therefore in relation to a new model. It is noted that it is not necessary for the Commission to show the effects or the consequences of a given agreement or concerted practice, once it is shown that the parties agreed to behave in a certain way. In this case the parties exchanged sensitive information in relation to several customers and agreed to exchange information regarding their market share evolution of the Fiat account. The Commission notes that this it sufficient to consider the behaviour described as contrary to Article 81 of the Treaty.

(414) A contact took place in September 2002 (sometime between 3 September and 18 September) between Mr […] of AGC and one of the competitors, possibly Saint-Gobain.[639] From the handwritten notes it can be seen that

635 See […].
636 See […].
637 See […].
638 See page 141 of Pilkington's response to the Statement of Objections.
639 It can be seen from […] that exchanges of information took place with Saint-Gobain for the GM/Fiat business and […] it is likely that the notes refer to exchanges with Saint-Gobain.

there was an exchange of information regarding the Ford account. Ford wanted to lower prices. Since the competitors did not want to lower the prices except for a reduction on the "VE/VA" (which is a price reduction as the result of technical changes), Ford had threatened to put them on "hold" and seek alternative suppliers. The reaction of the competitors was not to give in to the threat. Rather, the competing supplier receiving Ford's order should refuse and, if such a refusal was not possible, take action in connection with the price ("*Si pas possible de refuser, Actions autour du prix*").[640]

(415) In late September 2002, during a telephone conversation between AGC and Saint-Gobain pricing information was exchanged and allocation of the new VW Golf Plus (internal code VW 359) was discussed.[641] Saint-Gobain provided its own quotation price for the two fixed front and back quarter lights as well as the prices quoted by […], and information about the results of the quotation for the VW 359 model. According to the information provided, Saint-Gobain was awarded all parts except the quarterlights, the so-called "custodes", which were awarded to […] as its prices were as shown lower than those of Saint-Gobain.

(416) The discussion on the new VW Passat model (B6) was resumed later in autumn 2002. According to handwritten notes by Mr […] of AGC, Saint-Gobain and AGC considered the possibility that AGC would get the windshield business for the new Passat.[642] Indeed, AGC became the sole supplier of the windscreen of the new Passat.[643]

4.4.6. 2003

4.4.6.1. Summary

(417) In 2003 there is only evidence of bilateral contacts. Saint-Gobain had at least two contacts with AGC early in the year and in March. AGC and Soliver contacted each other at least three times in January, around March and on 11 March 2003.

(418) During these contacts, the competitors exchanged price information as well as other commercially sensitive information with a view to allocating supplies to the following customers: VW (December 2002 to 21 January 2003, early 2003, around March 2003 and on 11 March 2003), General Motors (March 2003) and Fiat (second half of March 2003).

4.4.6.2. Chronological description of the contacts

(419) In some telephone conversations between Mr […] of Saint-Gobain and Mr […] of AGC which occurred in the period December 2002 to 21 January 2003, price information for all glazing pieces for the VW Passat (B6) was exchanged.[644] Mr […] provided Mr […] with the prices that Saint-Gobain

640 See […].
641 See […].
642 "*New Passat: W/S is for SPX.*" See […].
643 See answer of […] to questionnaire of 3 March 2006, annex 5a, p. 16021.
644 See […].

intended to quote for the new Passat with, as a reference, the price that was quoted for the VW Golf but slightly increased.

(420) The handwritten notes show that after the first telephone conversation a second telephone call took place during which some prices were changed while others remained the same. There is also a reference to Soliver in the notes indicating that Soliver called Mr […] of AGC to state that it wished to keep the sidelights.[645]

(421) The exchange of price and cost information for the glazing of the VW Golf Plus (code name MPV359) was the subject of one or more contacts that took place in early 2003 between Saint-Gobain and AGC.[646] The prices exchanged include detailed pricing for the various parts with several options, such as the privacy glasses Venus and Athergreen of the two suppliers. It also contains an exchange of tooling costs for the various glazing parts and life time conditions.

(422) The reference to "life time conditions" refers, as explained in detail in section 4.1.1.1, to a practice in the industry whereby the carglass suppliers were required to provide a price for a given year but also to provide price reductions over the next three following years. This can be seen from the reference to "*12 months after SOP minus 0.5% and minus 0.5% during the following three years*".[647] This indicates that the two competitors had agreed to a price reduction of 0.5% for three years starting as of 12 months after the start of production.

(423) From the prices noted down in this exchange it can be seen that AGC did not intend to make an offer for the windscreen whereas Saint-Gobain's price for the backlight was higher than that of AGC. In other words, Saint-Gobain would cover AGC for the backlight and AGC would leave the windscreen to Saint-Gobain. According to VW AGC did indeed not make an offer for the windscreen, and Saint-Gobain's offer for the backlight was higher than AGC's.[648]

(424) Soliver contacted AGC two or three times by telephone around March 2003 to discuss the new sidelights of the new Volkswagen Passat.[649] The person from Soliver was Mr […], who was Soliver's […]. AGC discussed this request by Soliver with Saint-Gobain and they considered appropriate to leave the sidelights of the new Passat to Soliver. In particular, Soliver contacted AGC on 11 March 2003 to further discuss the allocation of the glazing for the Passat. AGC was worried that the backlights of the new Passat would be awarded to Guardian which it wanted to avoid. Soliver was to obtain the sidelights.[650]

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645 See […].
646 See […].
647 See […].
648 See Article 18 answer of […], file 57, annex 5a, p. 16021.
649 See […].
650 See […].

(425) […] Saint-Gobain and AGC had in the same period exchanged price information for the Saab models 440 and 641 combi. The purpose of this price exchange was […] to allow AGC to "cover" Saint-Gobain.[651]

(426) In its written response to the Statement of Objections[652] Soliver admitted that in 2002 and early 2003 "*a limited number of telephone contacts took place between Soliver employees and representatives of AGC and Saint-Gobain*" with regard to the new Volkswagen Passat model. Regarding the aforementioned contacts of early 2003, Soliver admits […]. Soliver, however, points out that it appears that already on 15 November 2001 – i.e. long before Soliver made contact with AGC and Saint-Gobain for this model – it was decided by the Big Three (and therefore without intervention by Soliver) to allocate the new Volkswagen Passat model in status quo between Saint-Gobain, Pilkington and Soliver. The latter suspects therefore that the Big Three decided to leave this contract to Soliver in order to exclude Soliver *de facto* as a competitor for other buyers (by granting it a well filled order book), as a result of which Soliver would no longer constitute a threat to the market-sharing and price agreements made by the Big three.

(427) The Commission notes the admissions of Soliver regarding the participation in these contacts, […], the eventual advantages prompted to it by these contacts with AGC and, regarding Soliver's comments on the behaviour of the Big three, it refers to in recital (407). However, the fact remains that Soliver accepted to become part to the anti-competitive agreement to share the contract for the new VW Passat.

(428) Finally, […] during a contact between Saint-Gobain and ACG likely to date from slightly after 11 March, maybe around the second half of March 2003.[653] According to the notes of Mr […], in the past AGC had covered Pilkington for certain Fiat models. However, AGC had suffered unintended losses such as the Ypsilon, the Stilo and the 147 models to Pilkington as well as 100% of the supply of the Alfa Romeo 156 which they had lost to Pilkington as well. […].[654]

4.5. Overview of main arguments by the parties and main counter-arguments by the Commission

(429) This section summarises the main arguments put forward by the addressees in their responses to the Statement of Objections and the counter-arguments by the Commission (see also Chapter 5 of this Decision). This section does not refer to the arguments in connection with the application of the fines guidelines (see Chapter 10), with leniency (see section 10.6), or with parental liability (see Chapter 8).

Saint-Gobain

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651 See […].

652 See points 85 ss. of Soliver's response to the Statement of Objections. See footnote 630.

653 See […].

654 […].

(430) The Commission notes that Saint-Gobain does not contest the facts concerning its participation in meetings and/or contacts with other carglass suppliers as set out in the Statement of Objections. The Commission also notes that Saint-Gobain expressly admits to having colluded with regard to the following: the outcome of the bidding process, that is to say, of the RFQs, price coverage, fixing of rebates concerning productivity for certain car manufacturers, concerted refusal to accept delivery of additional services without additional compensation and limiting divulgation of information to vehicle manufacturers in relation to production costs.[655] It moreover admits to having had contacts with its competitors in relation to the following accounts and during a specific period as follows: 3 years and 7 months for the VW account; approximately 4 years for the Fiat account; 4 years and 5 months for the Renault account and 5 years for the GM account.[656]

(431) Saint-Gobain, however, claims that the Commission has failed to prove that there was a single and continuous infringement. It argues that there was no global or centralised plan due to the purchasing power of the vehicle manufacturers and due to the fact that there was no market share stability mechanism put in place between the cartel participants. The elements the Commission used in the Statement of Objections in order to prove that contracts were allocated between competitors within the framework of a systematic common plan that was adhered to by the competitors[657] are, according to Saint-Gobain, insufficient.

(432) More particularly, Saint-Gobain contends that the complexity of the quotation procedures of carglass and the significant bargaining power of the car manufacturers did not allow the collusive practices to take place at a European level and they were in fact decentralised in relation to each car vehicle account.[658] In this respect, the Commission has failed to take into account which car manufacturers the glass suppliers were in business with as it insists on presenting the collusion as a European-wide cartel.[659] To demonstrate that there was no European-wide cartel, Saint-Gobain has analysed the periods during which it was involved in meetings and/or contacts with other competitors per vehicle account and concludes that for more or less long periods it was not involved.[660] Saint-Gobain does admit to having participated in contacts for certain vehicle accounts (see recital (430)) but stresses that these contacts were neither systematic nor centralised.

(433) Saint-Gobain moreover claims that no market share methodology was put in place between the competitors and that there was no market share freeze mechanism. According to Saint-Gobain, the notes taken during the

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655 See Saint-Gobain Glass France's response to the Statement of Objections, p. 26.

656 See Saint-Gobain Glass France's response to the Statement of Objections, p. 31.

657 For instance lack of capacity, double or multi-sourcing, price coverage, monitoring, and compensation.

658 See Saint-Gobain Glass France's response to the Statement of Objections, p. 26.

659 See Saint-Gobain Glass France's response to the Statement of Objections, p. 30.

660 In its response to the Statement of Objections, Saint-Gobain provided a table which illustrates that it was not involved in any contacts for each respective car account for longer or shorter periods of time during the period concerned.

meetings/contacts on which the Commission bases itself do not suffice on their own to prove that a global market share freeze mechanism was put in place. Saint-Gobain also contends that although the market shares appear stable in the table set out in recital (34) this was not the case. Saint-Gobain provided a study to prove the contrary.[661]

(434) Saint-Gobain argues that the mechanisms described in recitals (102), (103) and (105) of this Decision, such as Full Service Supply, lack of capacity and single, dual or multi supply sourcing, break-down of prices, price "covering" and price coordination, did not amount to a market share freeze. Regarding the Full Service Supply concept, explained in recitals (61), (105) and (389), Saint-Gobain fails to see how the refusal to engage in the "Full Service Supplier" and to avoid cost break downs amounts to a market share freeze.[662] As to lack of capacity, the Commission was not sufficiently explanatory as it limits itself to a few examples. Most examples concern vehicles already in production for which the car manufacturers already had decided who was to supply. It is therefore not relevant for proving a collusion the object of which would be refusal to submit a bid for particular glass pieces.[663] As regards double or multi-supply situations in which the competitors agreed that there was no capacity in order to keep the existing split of supply for the model in question (recital (102)), it claims that the glass suppliers did not maintain this kind of supply strategy in order to allocate customers. Such supply strategy choices are used by the customers, that is, the car manufacturers, especially when volumes are significant in order to have an alternative supplier (see recitals (62) and (63)). Finally, in relation to price "covering" and price co-ordination, these mechanisms are not sufficient to enable the Commission to conclude that the competitors had put a system in place which aimed at freezing market shares at a global level. Saint-Gobain points out that each year it receives 500 RFQs from car manufacturers which are quite complex and highly technical and for which there are several stages of negotiations with the car manufacturers. The fact that a competitor "covers" another competitor does not mean that the one covering cannot change its position and lower its prices thereby disrupting the "covering". A competitor could also easily change other technical aspects of its RFQ in its negotiations with a car manufacturer resulting in a different outcome of the RFQ than the one previously agreed on between competitors in order to achieve the alleged "market share freeze". In order to show that such a freeze applied, the Commission has to prove that a sophisticated system was applied, which it has not done. Saint-Gobain therefore considers that the Commission cannot conclude that there was a global market share stability in place between the competitors.[664]

(435) Moreover, Saint-Gobain claims that the Commission has not proven that a mechanism of monitoring was put in place by the competitors. The transparency of the market allows for easy identification by both carglass suppliers and car manufacturers. A carglass supplier can without other competitors' help easily find out who the supplier is for a specific vehicle.

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661 See Saint-Gobain Glass France's response to the Statement of Objections, p. 8, and annex 1 thereof.

662 See Saint-Gobain Glass France's response to the Statement of Objections, p. 26.

663 See Saint-Gobain Glass France's response to the Statement of Objections, p. 27.

664 See Saint-Gobain Glass France's response to the Statement of Objections, p. 27 and 28.

The purchasing departments of the carglass suppliers for instance respectively analyse market share data obtained through various sources. Saint-Gobain stresses that each competitor individually tracks their market shares through several tools at its disposition. In its view, the collusion therefore did not have as its object to render a transparent industry even more transparent.[665]

(436) As regards correcting measures or compensation, Saint-Gobain contends that such a mechanism was not put in place between the competitors as it would be inefficient, in particular due to the fact that there is an important time lag ("*décalage*") between the attribution of a project and the start of production of the glass pieces concerned. The attributions are made on the basis of estimated volumes and are therefore very ambitious in the beginning but often change later on. Saint-Gobain disagrees with the Commission's findings in recitals (115) and (117), and argues that the suppliers did not compensate each other according to hypotheses of volume. According to Saint-Gobain, the compensation examples to which the Commission refers actually concern the anticipated volume loss that a supplier estimates that he will suffer because the car manufacturer in the end preferred another supplier. Therefore, the requests for compensation referred to by the Commission do not necessarily relate to a decision by the suppliers in connection with the allocation of glass pieces in a particular supplier's favour. It therefore concludes that the Commission has not proven that losses relate to actual allocation of pieces/carsets. In order to prove this, the Commission furthermore has to show that the compensation covered the entirety of the car accounts for the whole infringement period, which it has not done.[666]

(437) The Commission maintains its position that there was a common plan adhered to by the competitors and maintains its view that the arrangements between the Big three and to a certain extent Soliver, amounted to coordinated arrangements at European level. It considers that it has sufficiently established that the purpose of the meetings and/or contacts between the competitors was the allocation of glass pieces for either new or existing vehicles as well as coordination of prices in relation to all major vehicle accounts in the EEA. The competitors also maintained relatively stable market shares for the supply of the OEM carglass parts in the EEA, despite a significant growth in sales and capacity during the period in question. Considering that the carglass industry is, as Saint-Gobain points out, driven by customer preferences, and considering that the car manufacturers want to be able to play the carglass suppliers against each other in order to lower prices, the Commission considers that it has proven that the carglass suppliers found a way to circumvent their customers by colluding with each other.

(438) The Commission maintains that the assessment of the evidence at its disposal is correct and that there was a common scheme as well as an overall objective pursued by the cartel participants and refers to the

665 See Saint-Gobain Glass France's response to the Statement of Objections, p. 28 and 29.

666 See Saint-Gobain Glass France's response to the Statement of Objections, p. 28 and 29.

relevant recitals of the Decision regarding the organisation of the meetings (recital (87) to (91)), the frequency of the meetings and contacts (recitals (92)), the individuals who participated in these meetings (recitals (93) to (97)), the reference to the "Club" used by the cartel participants (recitals (87) and (410)) and to the description of the numerous contacts set out in section 4.4 in which Saint-Gobain participated.

(439) The Commission disagrees with Saint-Gobain's argument that the meetings and contacts cannot form part of a European-wide cartel. Firstly, as regards the individuals participating from Saint-Gobain, even though the organisational structure of its commercial department had a slightly different internal structure compared with its competitors[667], the Saint-Gobain representatives had an overview at European level of the entirety of the car accounts. The Saint-Gobain representatives involved in the contacts were either the same individuals acting in double capacity (in that they were […] simultaneously) or acting in their capacity as […] and reporting to their respective superior, the […] (see recitals (94)-(96)).[668] Secondly, Saint-Gobain is incorrect in arguing that the contacts were decentralised in relation to each specific car account. As is shown in section 4.4, the competitors frequently discussed the carglass business across accounts at meetings on at least 18 occasions from 1998 to 2002 for the purposes of the allocation of glass pieces.[669] During these trilateral meetings, the competitors also discussed how to compensate each other within car accounts and sometimes across accounts.[670]

(440) Saint-Gobain's argument that it was only involved fully for the period January to November 2001 in relation to each vehicle account is incorrect.[671] As can be seen from section 4.4., the same employees of Saint-Gobain participated in several trilateral or bilateral meetings or contacts per year during the infringement period. Discussions between the competitors in relation to one or more car accounts were logically dependent on which phase of the bidding procedure a certain car account (that is to say, models/carsets/individual pieces) was, as well as on the commercial strategy used by the car manufacturer (see recital (63)). By way of example, in the case of a single sourcing strategy (with only one glass supplier) for certain models, the BMW, DaimlerChrysler and Peugeot accounts did not have to be discussed between the competitors until the car manufacturer in question decided on modifications over the production cycle of the car model (carset/piece) concerned. Therefore, the fact that Saint-Gobain allegedly did not discuss a specific car account during a

667 See […].

668 See […] and section 4.2.4. It is also noted that the different structure of the Commercial Department of Saint-Gobain compared with those of Pilkington and AGC explains the presence of more Saint-Gobain representatives at the meetings than for Pilkington and AGC.

669 See meetings on 9/10/1998, 22/4/1999, 20/9/1999, 30/9/1999, 5/7/2000, 28/7/2000, 31/7/2000, 11-25/10/2000, 27/10/2000, 1/11/2000, 13-14/12/2000, 26/1/2001, 20/6/2001, 19/7/2001, 29/10/2001, 30/4/2002, 29/5/2002 and 3/9/2002.

670 It is noted that Mr […], Saint-Gobain's […], admitted at the Oral Hearing of 24 September 2007 that […]. The original French text reads: "[…]".

671 See Saint-Gobain Glass France's response to the Statement of Objections, p. 32

certain period does not mean that it was not involved in any discussions at all.[672]

(441) Furthermore, the Commission notes that even if the carglass suppliers were in a "*rapport captif*", that is to say that they were dependent on the car manufacturers because of the latters' bargaining power and other parameters[673], this does not mean that Saint-Gobain could not allocate carglass pieces with its competitors at European level (see recitals (438) and (439)). Regarding the various parameters that Saint-Gobain refers to (see footnote 673), which the suppliers allegedly cannot control, it seems to ignore that the car manufacturers communicate information on these parameters to the carglass suppliers at several stages of the quotation process (see recital (435)), which enables the glass suppliers to take these parameters into account for the allocation of carglass supplies. The Commission has shown in section 4.4 that competitors used this kind of information for the purposes of allocation or reallocation of carglass pieces.

(442) As regards the argument in relation to market share stability, the Commission has at its disposal contemporaneous documents which illustrate that the competitors aimed at maintaining relatively stable market shares when allocating or reallocating carglass pieces. Not only had there been a common understanding prior to 2001, which was based on three different methods to calculate market shares - "*3) Actions – to define what*

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672 Saint-Gobain participated in the following meetings/contacts between 1998 and 2003. The trilateral meetings/contacts (B3) are marked in bold; and finally bilateral meetings/contacts involving Saint-Gobain are underlined. **Year 1998**: **Spring 1998**; 18/5/1998; 28/5/1998; 17/6/1998; 23/6/1998; 16/9/1998; **22/9/1998**; **3/11/1998**; 9/11/1998; 24/11/1998; 8/12/1998; 18/12/1998. **Year 1999**: **01/1999**; 15/1/1999; 20/1/1999; 12/2/1999; 9/3/1999; 22/4/1999; 16/6/1999; 27/7/1999 (document PDR12); **20/9/1999**; 30/9/1999; 26/10/1999; 2/11/1999; 11/11/1999; 17/12/1999. **Year 2000**: 13/1/2000; 14/2/2000; prior to 23/6/2000; prior mid-2000; mid-2000; June 2000; mid-2000; 23/6-17/7/2000; 5/7/2000; 21/7/2000; 28/7/2000; 31/7/2000; 2/8/2000; 8-9/2000; late 9/2000, 19/9/2000; Autumn 2000; Autumn 2000; 27/10/2000; 2nd half 10/2000; 11-25/10/2000; 31/10-8/11/2000; 10-11/2000; 1/11/2000; 5/11/2000; 9/11/2000; 11/2000; 13-12/12/2000; 12/2000. **Year 2001**: 01/2001; **26/1/2001**; prior 18/1/2001; around 26/1/2001; 14/2/2001; **26/4/2001**; 05/2001; **20/6/2001**; **19/7/2001**; 7/8/2001; 10/9/2001; before 09/2001; Autumn 2001; **29/10/2001**; 6/11/2001; **11/2001**; **15/11/2001**; 19/11-12/12/2001; **6/12/2001**; **12/2001**. **Year 2002**: **5/2/2002**; 15/2/2001; **30/4/2002**¸ **4-5/2002**¸ 29/5/2002¸ **3/9/2002**¸ 9/2002¸ Autumn 2002. **Year 2003**: 2/12-21/1/2003; 3/2003; Early 2003; 11/3/2003.

673 Bargaining power apart, other reasons for the "rapport captif" referred to by Saint-Gobain result from i) the absence of carglass suppliers on the determination of a certain number of economic key parameters such as the renewal politics of the range of models of cars (e.g. design, technical specifications, and frequency of renewals/restyling of car models), marketing issues, volumes, and prices (including in particular the decision by car manufacturers to apply a target price for a target volume requested at the stage for the RFQ; ii) the transfer of a significant amount of commercial risk which is partly imposed on the carglass suppliers; iii) totally one-way transparent market exclusively seen from the car manufacturers point of view (they receive all the detailed information from the carclass suppliers), in particular as regards the breakdown of prices in an RFQ; iv) it was not in the carglass supplier's interest to engage in price collusion as this would imply implementing further capacity which would increase heavy investments only to see itself loosing the business to another supplier. Even if the result is achieved and the bid is won/contract supply is renewed, the car manufacturers may have a strategic interest not to give more business to that particular glass supplier in order to maintain a balance between his glass suppliers; v) the margin of manoeuvre that the glass supplier has is very limited as car manufacturer may change several things regarding a model all the time. See Saint-Gobain Glass France's response to the Statement of Objections, p. 6 to 8.

the MKT is up to 2004 – describe clearly what is the reference (...) which base sq/m, volume, carset. It has no sense anymore [emphasis added] *to speak countries, (...) to decide a rule on new model up to 2004* (…)" - but as from 6 December 2001, the three competitors also intended to refine the approach by agreeing on a particular reference for the common market share calculation mechanism (see recital (114)).

(443) Other examples from the documents in the Commission's possession illustrate that the competitors intended to stabilise their respective market shares when allocating or reallocating carglass pieces. As can be seen from sections 4.3 and 4.4, the competitors attempted to maintain a certain market stability through their respective market tracking tools which were discussed during trilateral meetings and other contacts.

(444) Moreover, regarding the market stability as such, the table in recital (34) was calculated by the Commission using data received through Article 18 letters and is therefore considered to be based on correct figures. The Commission therefore maintains that there was a certain market share stability for the relevant period (see recital (112)).

(445) Regarding the various mechanisms which are referred to in section 4.3, the Commission is able to prove that these measures have as their object to facilitate the allocation and reallocation of carglass pieces between the competitors while aiming at maintaining market shares stable. Lack of capacity in connection with dual or multi sourcing was used by the competitors to manage shifts in suppliers by the car manufacturers. Regarding existing cars, in order to make sure that the car manufacturer would continue to dual source from the competitors concerned, the competitors agreed to inform the car manufacturer that none of them had sufficient capacity to take on 100% of the order so as to keep stable each competitor's market position, see recital (102). Regarding new cars, the lack of capacity was used by the carglass supplier in question to justify a refusal to submit an offer in connection with an RFQ. In relation to existing cars, the lack of capacity was used to maintain the *status quo* (for example, the current split of deliveries between two or more suppliers), see recitals (188), (189), (244) and (378) and footnote 241 of recital (102). Moreover, breakdown of prices,which was requested by the car manufacturers, was discussed and a solution was agreed on which prevented car manufacturers having an insight into the detailed figures of the suppliers. This coordination helped the competitors to allocate glass pieces between themselves. The Full Service Supply concept refers to a supply integration principle introduced by the car manufacturers which was discussed among competitors in order to better coordinate their actions.[674] […] this supplier integration means that the car manufacturers request the supplier not only to quote on the per price part but also on other matters such as development and the prototyping and that the suppliers wanted to avoid this as this practice was started in order to better understand the cost breakdown of

[674] See recital (60).The RFQ often includes a table asking for a detailed cost break down of the price ("*décomposition de prix*") quoted for each of the glass parts under tender, including development and tooling costs and also a detailed breakdown of the productivity gains.

suppliers and thus to put pressure on suppliers to lower their prices.[675] Finally, regarding price coordination and "covering", the Commission has demonstrated that the competitors "covered" each other for various contracts/pieces, see for instance recitals (132), (139), (171), (183), (190), (194), (285), (247), (223), (226), (203), (219), (227), (231), (303), (333), (346) and (408).

(446) In relation to monitoring of market shares for car accounts, the Commission agrees with Saint-Gobain that the participants in the cartel provided their own forecasts and more long-term overviews through their respective marketing departments, which is legitimate when individually done, see recitals (76) to (85). However, information coming from various sources including in particular the information collected by the […] was used by the competitors at their meetings with a view to allocating or reallocating carglass pieces.

(447) Finally, regarding correcting measures or compensation, the Commission has illustrated in sections 4.3 and 4.4 how the competitors compensated each other or intended to compensate each other when the allocation or reallocation had not worked out in practice. One of the reasons that the allocation sometimes did not work in practice was due to modifications by the car manufacturers for instance over the production cycle of a car model.[676] At the meetings/contacts described in section 4.4, the competitors used references based on both volume by carset/car pieces or square metres and value from these different sources to persuade the other competitors of what business they should obtain. The competitors constantly kept their respective profitability analyses in mind when discussing as they wanted to get rid of loss-making parts (see recitals (112) and (458)).

Pilkington

(448) The Commission notes, firstly, that Pilkington acknowledges that their employees engaged in discussions with competitors between 1998 and 2002 which Pilkington understands have "*raised some suspicions from a competition law point of view*" and "*regrets that they took place*".[677] The Commission moreover notes that, regarding the behaviour of the competitors as set out in this Decision, in its response to the Statement of Objections Pilkington admits that it: exchanged end-prices at a bilateral meeting on 10 March 1998 (see recital (125)); exchanged prices with its main competitors at a trilateral meeting on 20 September 1999 (see recital (173) et seq); intended to exchange prices at another trilateral meeting on 5 July 2000 (see recitals (230)-(231)); although there was no "single cohesive strategy" there were attempts to compensate, in their own words to "*correct perceived injustices*"; intended to maintain prices for a particular car model at a trilateral meeting on 28 July 2000 (see recitals (238)-(239)); exchanged sensitive price information at a trilateral meeting on 20 June 2001 (see recitals (321)-(323)); and finally intended to allocate supply for a specific car model at a meeting in spring 1998 (see recital (132)), in Pilkington's

675 See […].

676 For concrete examples of compensation attempts by the competitors, see section 4.4.

677 See Pilkington's response to the Statement of Objections, p. 4.

own words, "*the purpose was to explore the possibility of an understanding to allocate supply for the new Opel Vectra*".[678]

(449) Pilkington, however, claims that the Commission has failed to prove that it has infringed the Community competition rules since the evidence on which it relies is too weak in that […] and consequently do not reach the requisite legal standard needed to prove an infringement in a cartel case; the exchanges between competitors did not result in any actual agreement or understandings in practice, and even if they did, these agreements or understandings were either not implemented or implementation failed in practice; the Commission has failed to take due account of certain key features of the market for carglass further divided into supply features, demand features and practical difficulties for allocating contracts and made several factual errors in section 4.4 of the Statement of Objections and finally the Commission has failed to prove that the competitors monitored market shares with a view to rendering them stable.[679] In sum, Pilkington contends that the Commission failed to establish a single and continuous infringement under Article 81(1) of the Treaty and that there was no common scheme aiming at stabilising overall market positions.[680]

(450) Pilkington claims that the Commission's evidence is not credible, as it cannot sustain the finding of an infringement by reference to the standard of proof. In Pilkington's view, there was no coherent shared rationale behind the competitors' apparent willingness to engage in discussions. The documents at the Commission's disposal show according to Pilkington that the competitors persistently misled each other, and bid aggressively to win business which according to the Commission had been "designated" to somebody else. Pilkington argues in particular that […] have been constructed and that they are therefore not credible.[681]

(451) Pilkington moreover contends that the exchanges between the competitors did not result in any actual agreement or understandings in practice. Pilkington considers that in order to prove an infringement the Commission has to carry out a detailed analysis of each and every one of the alleged agreements or understandings. The Commission has failed to do this whereas Pilkington has done it. Pilkington concludes that its analysis conclusions concerning the true factual and legal characterisation of the discussions corroborate its position that there was no infringement.[682]

(452) As regards Pilkington's claim that the Commission has not correctly considered the key features of the industry, Pilkington more particularly argues that the Commission has failed to take into account the following. Firstly, certain supply-side features which illustrate why discussions

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678 See p. 174 of Pilkington's response to the Statement of Objections.

679 See Pilkington's response to the Statement of Objections, (i) relying on too weak evidence, p. 14 to 21; (ii) the exchanges between competitors did not result in any actual agreement (referred to as legal aspect), see p. 82 to 186; (iii) failing to take due account of certain key features of the market for carglass, p. 22 to 26; (iv) errors made in section 4.4 of the Statement of Objections (referred to as factual aspect), p. 82 to 186; and (v) no market share monitoring, p. 26.

680 For (i), see Pilkington's response to the Statement of Objections, p. 7.

681 See Pilkington's response to the Statement of Objections, p. 18 and p. 66 to 81.

682 See Pilkington's response to the Statement of Objections, p. 80 and p. 82 to 190.

between competitors do not make sense: the production of raw float glass and its processing for carglass is characterised by high fixed costs of production and carglass suppliers therefore want to achieve the highest utilisation of existing carglass production facilities. Consequently, the carglass suppliers have a strong incentive to discount the price to ensure the glass is sold. Linked to this, if a carglass supplier loses a contract with a car manufacturer (thereby failing to maintain full plant utilisation) it will compete even more aggressively to win another contract to ensure that full demand for output is restored. Moreover, if the carglass supplier chooses to invest in increased capacity (even 2-3% in this industry is regarded as significant), the supplier must also compete aggressively to ensure that capacity is fully utilised in order to reach the pricing and efficiency targets requested by the car manufacturers. In this industry context, Pilkington contends that the Commission's conclusion that market shares remain "remarkably" stable is misplaced as market share stability does not provide evidence of systematic collusion among carglass suppliers in this particular industry. In this respect, it states that if each supplier generally is maintaining high capacity utilisation in this way, market shares may not ever move significantly, other than to reflect changes in the relative capacity of each of the suppliers over time.

(453) Secondly, regarding the key features of the industry, Pilkington puts forward that a number of factors, which confer considerable buyer power on the car manufacturers, are relevant for the Commission's assessment, underlining that there has been a concentration of demand by car manufacturers in an already concentrated industry as the Commission notes (see recital (29)). The car manufacturers have several ways to maximise their bargaining power which, according to Pilkington, would render collusion impossible.[683]

(454) Thirdly, regarding the key features of the industry, the Commission has failed to take into account the practical difficulties with agreeing and implementing arrangements between competitors.[684] As a result, Pilkington points out that any allocation of contracts would require close coordination of all these industrial key features and stresses that allocation between

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683 The car manufacturers would set target prices and ask suppliers to meet these prices and the tenders will be run until no further bids are made. The buyer power is moreover exercised both during the development phase and after the vehicle launch. Where car manufacturers believe that they can obtain lower prices they sometimes put parts out for re-quotation, which can result in substantive price reductions by suppliers from their original quotations or even from the subsequently contracted price level. In addition, the length and terms of the contracts can be subject to variation by a car manufacturer during its life in order to re-negotiate price or select alternative suppliers. The use of dual or multi sourcing strategies facilitate this and enables the car manufacturers to shift orders between different suppliers during the term of the contract, see Pilkington's response to the Statement of Objections, p.21 to 26.

684 Pilkington refers to the following in its response to the Statement of Objections: a) factors which affect the choice of a supplier such as dual or multi-sourcing strategies, assessment of performance by incumbent suppliers and assessment of bidders' technical competence. b) Price factors which include tooling costs, development costs, prototype costs, packaging charges, costs from quality management and logistics and part-price calculated over the lifetime of the model together with productivity proposals. c) Tender processes vary as car manufacturers want to maximise their ability to play suppliers off against each other, where, for example there are on-going simultaneous negotiations between the car manufacturers and the suppliers with constant communication during the final phase.

competitors would effectively require that information relating to tender submissions and the detail of subsequent submissions with the car manufacturers is shared. The Commission has not put forward sufficient evidence to prove the collusion.

(455) Regarding monitoring of market shares, Pilkington claims that the Commission has failed to see that market share analysis is a common and perfectly legitimate tool allowing each supplier to assess its relative commercial and competitive performance. It is particularly easy in the carglass industry where several third party data sources are used to calculate market shares with a relatively high degree of precision. Pilkington states that the fact that the suppliers use these sources does not provide evidence at all of the monitoring of an anti-competitive arrangement, which the Commission appears to imply. Pilkington alleges regarding market shares that the Commission has wrongly relied on three sources of evidence to support its allegations regarding the purpose of the so called "Club" discussions. Pilkington particularly considers that the limited number of references from documents in the file, […] corroborating documents […], does not allow the Commission to construe as evidencing a "master agreement" and a "master purpose" of the discussions. According to Pilkington, there was no overall market stabilisation objective underpinning the so called "Club" discussions.[685] Pilkington, who admits that the features of any alleged market stabilisation plan would naturally include both monitoring and some form of correcting mechanism, alleges that this was not the case. In Pilkington's view, the Commission has not been able to prove that there was an agreed and defined methodology between the competitors for tracking and agreeing on market shares. The Commission has wrongly assessed the documents at its disposal because such a plan would according to Pilkington require an agreed and sophisticated process of monitoring across contracts to ensure the allegedly desired stability of overall market shares over time. It requires that each individual contract represents a significant proportion of the total market and market share would have to be a function of two key variables applied to these contracts: initial contract outcomes and subsequent adjustments of allocations of supply during the vehicle's production life.[686] Furthermore, regarding the meeting on 6 December 2001, Pilkington alleges that the exchanges at this trilateral meeting were nothing more than negotiations, that market share data was discussed but only as a negotiating tool and finally that the parties according to Pilkington "still" could not agree on a common methodology for calculation of market shares.[687]

(456) The Commission considers the arguments made by Pilkington unfounded. With regard to the first point, that the evidence at the Commission's disposal not reaching the requisite standard of proof as established by the Court of Justice of the European Communities, the Commission disagrees for the following reasons. […] have been corroborated by contemporaneous documents consisting mainly of handwritten notes by the

685 See Pilkington's response to the Statement of Objections, p. 68 to 75 assessing each paragraph in the Statement of Objections which refer to market share stability.

686 See Pilkington's response to the Statement of Objections, p. 75.

687 See Pilkington's response to the Statement of Objections, p. 76.

employees participating in the meetings and contacts set out in this Decision. […] have provided detailed information on the various aspects of cartel including the way in which it was organised, the methods adopted by cartel members to allocate contracts, as well as the overall operation of the cartel. The Commission notes in this regard that Saint-Gobain has not contested these meetings and contacts and considers that this fact further corroborates its findings.

(457) Secondly, the evidence in the Commission's possession show that the behaviour of the addressees of this Decision amounted to an agreement contrary to Article 81 of the Treaty, as will be further assessed in Chapter 5 of this Decision.

(458) Thirdly, the key features of the carglass industry were described in the Statement of Objections and are more thoroughly described in section 4.1 of this Decision. Pilkington correctly states that the discussions were similar to commercial negotiations during which each competitor intended to persuade the others of what it should obtain on the basis of the production volume foreseen in the RFQs and that these negotiations should be seen in the light of the respective profitability analyses by the three competitors. However, the fact that cartellists have to negotiate among themselves in order to reach agreement on the allocation of contracts is not surprising, but in a competitive environment any commercial negotiations would normally take place between the customer and the supplier, and not among suppliers. An important aspect of these analyses were the loss-making parts, as, for these parts, the three competitors respectively either wanted to stop producing them and switch production to more profitable activities or, alternatively, increase the price of the glass parts in question (see recital (112)). It is true that in a fully competitive industry, the competitors would compete even more aggressively, but due to the arrangements in place between the carglass suppliers they did not do so for the period in question. Such commercial negotiations between competing suppliers cannot be legitimate in the Commission's view as they were anti-competitive by nature, even though Pilkington claims the contrary. As for the demand side features and other practical difficulties which, according to Pilkington, rendered impossible any form of arrangements, the Commission has explained in detail how the three competitors arrived at arrangements despite the bargaining power of the car manufacturers and their respective RFQ strategies in sections 4.2, 4.3. and 4.4. The Commission points out that the competitors intensively exchanged information in relation to figures coming from the RFQs and the car manufacturers during various phases of the vehicle bidding procedures. The Commission does not need to have the RFQ forms as such for the purposes of proving the cartel arrangements, as it considers that the evidence at its disposal is sufficient to prove the infringement.

(459) Fourthly, Pilkington's argument regarding "errors of assessment" summarized in recital (452) have been dealt with in connection with each meeting or contact in section 4.4 (see also section 5.6).

(460) Finally, regarding monitoring of market shares, the Commission notes that Pilkington seems to have misinterpreted section 4.1.3. of the Statement of

Objections (section 4.1.3. of this Decision). The Commission has referred to different categories of data to calculate market shares such as data collected by each company's Marketing Department, including data collected by the […]. The first category carried out by the Marketing Department refers to market share estimates calculated, as Pilkington correctly explains in its response, individually and based on various third-party data sources (see recitals (74) to (75) in section 4.1.3.1 and recitals (76) to (85) in section 4.1.3.2) which are used for the medium to long-term perspective. The second category refers to data collected on a more short-term basis by the respective […] which normally is collected individually, but which was then used for the purposes of the allocation of contracts between competitors. The Commission is in fact able to show that both kinds of data were used by the cartel participants during meetings and other contacts in order to allocate or re-allocate carglass pieces.

(461) Regarding Pilkington's allegation in relation to market share stability the Commission maintains that the object of the cartel arrangements was the allocation between the competitors of the supply of carglass pieces to car manufacturers through price coordination and exchanges of commercially sensitive information. To this end, the competitors monitored their market positions in order to keep stable their market shares and applied correcting measures when the allocation did not work out as initially agreed. The market shares were used in order to keep a certain balance between the competitors in connection with the allocation. The balance sought by the competitors can by way of example be illustrated through the following handwritten notes which have been described in detail in section 4.4: "*on joue la saturation pour garder nos parts de marché*." (see recital (189)), "*38%/38%/24% split à l'horizon 2001/2002*" (see recital (177), "*SPX will as to recover volumes = appr. 60%*", "*Absolutely no reduction in market share*" (see recital (323)), "*Pilkington will ask a price increase to avoid change of market share from X →Y→Z*" (see recitals (348) and (522)); "*Market share evolution – next time*" (see recital (408)). At the meeting of 6 December 2001, the competitors discussed what had been the basis for calculating market shares up to that date and how to refine the methodology (see section 4.3.2., recital (113) in particular). Pilkington interprets the following sentence from the handwritten notes of this meeting: "*agree upon (…) a rule on <u>new</u> model up to 2004*" (emphasis added) as nothing more than legitimate negotiations between suppliers. According to Pilkington, this sentence also demonstrates that the competitors still had not agreed on a common market share methodology (see recital (374)). However, having regard to the overall body of evidence described in this Decision, the Commission considers that the handwritten notes of this meeting constitute sufficient evidence that a methodology was already in place between the competitors before that meeting as described in section 4.1.3.2 (methods used to track market shares), sections 4.3 (and 4.3.2. in particular) as well as in section 4.4 (see recitals (113) to (115)). The three competitors were in fact discussing a refined methodology compared with the former one, which was based on three reference methods: ("*3) <u>Actions</u> – to define what the MKT is <u>up to 2004 – describe **clearly** what is the reference: (…)</u>*" (<u>emphasis added</u>).The market share methodology used up to this date referred to the following bases: square metres, volume and carset. The refined methodology discussed at this

meeting was intended to clarify which reference method to use out of the three.(see recital (113) and recitals (76) to (86)). A further reference method, which was also used by the competitors, refers to value (see recital (114)). The Commission considers that the exchanges cannot be seen as simple negotiations, as alleged by Pilkington, and that they form part of the infringement (see recital (375)).

Soliver

(462) Soliver admits […], but claims that it was not part of a cartel between the three main carglass suppliers; that it did not attend any of the trilateral meetings; and that it never asked any of the other companies to represent its interests at any of these meetings. Soliver claims that the inappropriate contacts to which it admits did not form part of any overall plan or understanding. The evidence prior to the period November 2001 to March 2003 is not sufficiently precise for the Commission to be able to use it to the required standard.[688] The references to Soliver in the handwritten notes taken at the trilateral meetings could in fact come from either information that one of the competitors had about Soliver from their float glass supplier business relationship, or, alternatively, from the car manufacturer, e.g. VW or Fiat with whom Soliver did business. They do therefore not constitute evidence of Soliver's participation in the cartel.

(463) Soliver also claims that […]. In its additional observations of 26 October 2007, addressed to the Hearing Officer, Soliver commented further on this.

(464) The Commission takes the view that it has proven to the requisite legal standard that Soliver did indeed participate in some of the meetings and/or contacts set out in section 4.4. Soliver's participation is moreover corroborated by contemporaneous documents consisting of handwritten notes by its own employees as well as the employees of AGC. The Commission accepts Soliver's argument that it did not become involved in the cartel until 19 November 2001.

(465) Regarding Soliver's role compared with that of […], the Commission notes that in a letter of 26 October 2007 from the Hearing Officer to Soliver, it is explained why Soliver […].[689] The Commission has a certain margin of discretion when deciding on how to conduct inspections under Regulation (EC) No 1/2003 and considers that it has correctly used its investigative powers under that Regulation.

688 See Soliver's response to the Statement of Objections, p. 1 to 19.

689 See letter of the Hearing Officer of 26 October 2007, file 195.

PART 2: LEGAL ASSESSMENT

5. APPLICATION OF ARTICLE 81 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

5.1. Relationship between the EC Treaty and the EEA Agreement

(466) The arrangements described in sections 4.3 and 4.4. applied to all the territory of the EEA for which a demand for carglass existed, in particular as regards original equipment glass for first assembly of new vehicles as well as for replacement sold to vehicle manufacturers, as the cartel members had sales of the carglass products concerned by this Decision in all the Member States and in the EFTA States, party to the EEA Agreement.

(467) The restrictive arrangements set out in Chapter 4 therefore applied to all the EEA States, that is all the Member States together with Norway, Liechtenstein and Iceland.

(468) The EEA Agreement, which contains provisions on competition analogous to the EC Treaty, entered into force on 1 January 1994. The infringement is deemed to have started on 10 March 1998 (see Chapter 9 for the duration of the infringement of each undertaking). The EEA agreement (primarily Article 53 thereof) applies to the arrangements concerned by this Decision.

(469) Insofar as the arrangements affected competition in the common market and trade between Member States, Article 81 of the Treaty is applicable. As regards the operation of the cartel in the EFTA States which are part of the EEA ("EFTA/EEA States") and its effect upon trade between the Member States and EFTA/EEA States or between EFTA/EEA States, Article 53 of the EEA Agreement is applicable.

5.2. Jurisdiction

(470) In this case the Commission is the competent authority to apply both Article 81 of the Treaty and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement, since the cartel had an appreciable effect on trade between Member States and between Contracting Parties of the EEA Agreement, as described in section 2.4 of this Decision.

5.3. Article 81 of the Treaty and Article 53 of the EEA Agreement

5.3.1. Article 81 of the Treaty and Article 53 of the EEA Agreement

(471) Article 81 of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings or 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, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.

(472) Article 53 of the EEA Agreement (which is modelled on Article 81 of the Treaty) contains a similar prohibition. However the reference in Article 81 to trade "between Member States" is replaced by a reference to trade "between Contracting Parties" and the reference to competition "within the common market" is replaced by a reference to competition "within the territory covered by the EEA Agreement".

5.3.2. The nature of the infringement

5.3.2.1. Agreements and concerted practices

Principles

(473) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements between undertakings, decisions of associations of undertakings and concerted practices.

(474) An *agreement* can be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties. Furthermore, it is not necessary, in order for there to be an infringement of Article 81 of the Treaty or of Article 53 of the EEA Agreement, for the participants to have agreed in advance upon a comprehensive common plan. The concept of *agreement* in Article 81(1) of the Treaty and Article 53 of the EEA Agreement would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.

(475) In its judgment in PVC II case[690], the Court of First Instance stated that "*it is well established in the case law that for there to be an agreement within the meaning of Article [81(1)] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*"[691].

(476) Also, if an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed. It is, indeed, well established case-law that "*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not*

690 See judgment of the Court of First Instance of 20 April 1999 in Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij and Others v Commission* (PVC II) [1999] ECR . II-931, paragraph 715.

691 The case-law of the Court of Justice and the Court of First Instance in relation to the interpretation of Article 81 of the Treaty applies equally to Article 53 of the EEA Agreement. See recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement, as well as Case E-1/94 of 16.12.1994, recitals 32-35. References in this text to Article 81 therefore apply also to Article 53.

publicly distanced itself from what was agreed in the meetings".[692] This should take the form of an announcement by the company that it would distance itself from the cartel objectives and the methods to be used for implementing those objectives.

(477) Although Article 81(1) of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of "*concerted practices*" and "*agreements between undertakings*", the object is to bring within the prohibition of these Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition[693].

(478) The criteria of co-ordination and co-operation laid down by the case-law of the Court of Justice, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market[694].

(479) Thus, conduct may fall under Article 81(1) of the Treaty as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour[695]. Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice.

(480) Although in terms of Article 81(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation

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692 See judgment of the Court of First Instance in Case T-334/94 *Sarrió* v *Commission* [1998] ECR II-1439, paragraph 118. See also Case T-141/89 *Tréfileurope Sales* v *Commission* [1995] ECR II-791, paragraph 85; Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 232; and judgment of 15 March 2000 in Joined Cases T-25/95 et al. *Cimenteries CBR and others* v *Commission* [2000] ECR II-491, paragraph 1389.

693 See Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64.

694 See judgment of the Court of Justice in Joined Cases 40-48/73 et al. *Suiker Unie and others v Commission* [1975] ECR 1663.

695 See also Case T-7/89 *Hercules v Commission*cited above, paragraph 256.

occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 81(1) of the Treaty even in the absence of anti-competitive effects on the market.[696]

(481) Moreover, it is established case-law that the exchange, between undertakings, in pursuance of a cartel falling under Article 81(1) of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that Article[697].

(482) It is not necessary, particularly in the case of a *complex infringement* of long duration for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of *agreement* and *concerted practice* are fluid and may overlap. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 of the Treaty lays down no specific category for a complex infringement involving different forms of anti-competitive behaviour.[698]

(483) In a situation where there are several cartel members and their anti-competitive behaviour over time can be characterised as either agreements or concerted practices (complex infringement), the Commission does not need to assess precisely for each time of behaviour in which group it falls.[699]

(484) An agreement for the purposes of Article 81of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term "*agreement*" can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court

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696 See also Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-166.

697 See, in this sense, Cases T-147/89, T-148/89 and T-151/89, *Société Métallurgique de Normandie v Commission*, *Trefilunion v Commission* and *Société des treillis et panneaux soudés v Commission*, respectively, paragraph 72.

698 See Case T-7/89 *Hercules v Commission*, cited above, paragraph 264.

699 See paragraph 696 of *PVC II* judgment cited above; "[i]*n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [81] of the Treaty*".

of Justice has pointed out in *Commission v Anic Partecipazioni SpA*[700], upholding the judgment of the Court of First Instance, it follows from the express terms of Article 81(1) of the Treaty that an agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.

(485) According to the case-law, the Commission must show precise and consistent evidence to establish the existence of an infringement of Article 81 of the Treaty. It is, however, not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the Commission, viewed as a whole, meets that requirement.[701] It is in fact normal that agreements and practices prohibited by Article 81 of the Treaty assume a clandestine character and that associated documentation is fragmentary and sparse. In most cases therefore, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the Community competition rules.[702]

Application to the case

(486) The facts as established in sections 4.3 and 4.4 of this Decision demonstrate that the arrangements of the undertakings Saint-Gobain, Pilkington, AGC and Soliver constitute agreements and/or concerted practices under Article 81 of the Treaty.[703]

(487) In particular, as can be seen from the overview of meetings and contacts in section 4.4, the four competitors participated in numerous meetings in a tripartite or bipartite manner, and had frequent contacts by telephone or fax. […] from 10 March 1998 the competitors Saint-Gobain, Pilkington, and AGC (the latter as from 18 May 1998) started to allocate customer contracts[704] through coordination of prices and supplies[705] as well as

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700 See judgment of the Court of Justice in Case C-49/92 P *Commission* v *Anic Partecipazioni SpA* [1999] ECR I-4125, at paragraph 81.

701 See, to that effect, Joined Cases T-305/94 et al. *Limburgse Vinyl Maatschappij and Others* v *Commission* ('PVC II'), cited above , paragraphs 768 to 778, and in particular paragraph 777, confirmed on the relevant point by the Court of Justice with judgment of 15 October 2002 in Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschaapij and Others* v *Commission*, [2002] ECR I-8375, paragraphs 513 to 523. See also judgment of the Court of First Instance of 8 July 2004 in Case T-67/00 *JFE Engineering v Commission*, [2004] ECR II-2501, paragraphs 179 and 180.

702 See judgment of the Court of Justice in Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg Portland and others v Commission*, [2004] ECR I-123, paragraphs 53-57 and judgment of the Court of First Instance of 27 September 2006 in Joined Cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP and T-61/02 OP, *Dresdner Bank AG and Others v Commission*, [2006] ECR II-3567, paragraphs 59-67.

703 See section 4.4: meetings on mid-2000, 20/9/1999, 5/7/2000, 28/7/2000, 20/6/2001 including exchanges of information, see meetings/contacts on spring 1998, 9/10/1998, 18/12/1998, 15/1/1999, 15/7/1999, 20/9/1999, 17/12/1999, 14/4/2000, 11/2000, 11/2001, 20/6/2001, 15/11/2001, 5/2/2002, 30/4/2002, mid 2002.

704 See section 4.4: meetings and/or contacts on the following dates: November 1998, 9/11/1998 20/9/1999 Peugeot 30/9/1999, 2/11/1999, 12/2/1999, 16/6/1999 20/9/1999, 26/1/1999, early 1999, 19/9/2000, Autumn 2000, 14/2/2000, prior to mid-2000, 5/7/2000, 28/7/2000; prior to 23/6/2000, 2/8/2000, Aug/Sept 2000, 5/11/2000, 13/1/2000, 27/10/2000, 13/4/2000, late Sept 2000, 27/10/2000, second half

through exchanges of commercially sensitive information[706]. Together with Soliver, who joined the cartel from at least November 2001 until […] March 2003, the competitors distorted competition as regards carglass supplies to motor vehicle manufacturers through concerted actions mainly on a customer by customer basis and involving a coordination of their respective pricing policies.

(488) The frequency and continuity of these meetings and contacts spanning over 5 years resulted in coverage of all major manufacturers producing passenger cars and light commercial vehicles in the EEA. When a manufacturer with production capacity in the EEA launched a new model and issued an RFQ for the glazing, the three major glass suppliers and, to the extent described in section 4.4, Soliver, discussed in a systematic manner the RFQ in question, and either agreed allocation of supplies amongst themselves or informed each other about their supply strategy, which meant at times not to quote due to an alleged lack of capacity.

(489) In order to reach consensus on the allocation of the supplies the competitors monitored[707] in a coordinated manner the evolution of their respective market positions and took correcting measures when actual sales volumes and/or actual contract nominations diverted from forecasted market shares. In the light of the information made available through these contacts, they agreed in certain cases on correcting measures in order to compensate[708] each other when the envisaged allocation of carglass supplies did not work in practice and threatened to alter the balance of their respective market positions.

(490) As stated in recital (485), a number of coincidences and indicia taken together may, in the absence of another plausible explanation, constitute evidence of a complex agreement aimed at pursuing the same common purpose. In this case, the commonality of the issues and measures discussed during the meetings and contacts can only be explained by the existence of a common anti-competitive plan. This anti-competitive plan was to allocate supplies with a view to maintaining an certain overall

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of October 2000, mid-2000, Oct/Nov 2000, 23/6 and 7/7 2000, 26/1/2000, before Sept 2001, 26/4/2001, 19/7/2001, 19/7/2001, 19/11-12/12 2001, 15/11/2001, 5/2/2002, 5/2/2002, April/May 2002, 29/5/2002, 30/4/2002, 30/4/2002, 29/5/2002, 29/5/2002, 3/9/2002 and VW March 2003.

705 See section 4.4 18/5/1998, 28/5/1998, 17/6/1998, 23/6/1998, 16/9/1998, 29/9/1998, 3/11/1998, Spring 1998, 10/3/1998, 7/12/1998, 17/12/1998,26/10/1999, 2/11/1999, 15/1/1999, 22/4/1999, 20/9/1999, 30/9/1999, 11/11/1999, 26/1/1999, 15/7/1999, early 1999, 5/7/1999, 28/7/2000, Aug 2000, 14/2/2000, 5/7/2000, 28/7/2000, 23/6/2000, June 2000, July/Sept 2000, late Sept 2000, mid-2000, late Sept 2000, Oct/Nov 2000, Dec 2000, 31/7/2000, 9/11/2000 13-14/12/2000, 21/7/2000, 11-25/10/2000, 1/11/2000, 20/6/2001, 29/10/2001, 26/1/2001, 20/6/2001, 29/10/2001, 26/1/2001, 19/7/2001, 6/11/2001, prior to 18/1/2001, 18/1/2001, 14/2/2001, 19/7/2001, 29/10/2001, 29/11/2001, end 2001, 26/1/2001, 20/6/2001, Autumn 2001, 15/11/2001, 5/2/2002, 3/4/2002, 30/4/2002, mid-Febr 2002, 3-18 Sept 2002, Dec 2002-Jan 2003, early 2003, 11/3/2003, second half March 2003.

706 See section 4.4: 18/12/1998, Spring 1998, 9/10/1998, 17/12/1999, 20/9/1999, 15/1/1999, 20/9/1999, 15/7/1999, 14/2/2000, Nov 2000, Nov 2001, 20/6/2001, 20/6/2001, 20/6/2001, 15/11/2001, 5/2/2002, 30/4/2002, and mid-February 2002.

707 See section 4.3.2 and section 4.4: 28/7/2000, 20/6/2001, 20/6/2001 and 15/11/2001.

708 See section 4.3.3 and section 4.4: 5/7/2000, 28/7/2000, 27/10/2000, 17/6/2000, 20/6/2001, 20/6/2001, 15/11/2001, 5/2/2002, April/May 2002.

stability of the parties' position[709] on the market concerned, or, **[…]**, to "freeze" the respective market shares of the suppliers.[710]

(491) As established in section 4.4., the undertakings involved in the anti-competitive activities expressed their joint intention on numerous occasions to behave in the market in a certain way. The cartel activities from March 1998 to March 2003 constituted a common plan among the four participants, which determined the lines of their mutual action in the area of carglass and limited the commercial autonomy of each participant.

(492) This overall plan qualifies as an agreement between undertakings within the meaning of Article 81 of the Treaty in the sense that, during the trilateral or bilateral meetings and contacts, the undertakings concerned expressed their joint intention to conduct themselves on the market in a specific way. This behaviour consisted essentially in following a jointly preconceived customer allocation system, coordination of prices and supply strategies and refraining from competition with regard to carglass supplies allocated to the other participating competitors.

(493) That the cartel scheme may be qualified as an agreement is illustrated by the fact that, in some of the handwritten notes of one of the employees of the undertakings involved, the competitors expressly referred, as for instance in the case of the Seat Alhambra, to an agreement which was confirmed and accepted by the competitors (see recital (211)).

(494) The term agreement applies not only to the overall scheme, but also to the implementation of what had been agreed in pursuance of the same common purpose of controlling the market. As such, one of the actions taken to ensure the implementation of the overall plan was the sharing of market information which made it possible to review implementation of the customer allocation agreement as well as the adoption of a compensation scheme in order to make adjustments where there were divergencies from what had been agreed.

(495) Some factual elements of the illicit arrangement could also aptly be characterised as a concerted practice. Where there was not clearly an agreement behind the actions taken to ensure implementation through the exchange of confidential market information and the adoption of a compensation scheme, the operation of this agreement through the regular exchanges of confidential sales information between the undertakings could also be regarded as adherence to a concerted practice to facilitate the coordination of the parties' commercial behaviour. As such, the suppliers in question were able to monitor current market shares and customer demand in order to ensure adequate effectiveness of the agreement as well as the joint control of the market. These arrangements, even if they may not exactly qualify as agreements, would at least meet the criteria to be considered as a concerted practice.

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709 See section 4.4: 4 June 1997, 1998, 20/9/1999, 30/9/1999, July-Sept 2000, 7/7/2000, prior to June 2000, 20/6/2001, Nov 2001, 20/6/2001, 20/6/2001, 29/10/2001, 29/10/2001, 29/11/2001, 30/4/2002, 3/9/2002, and 21/10/2004.

710 See […].

(496) The behaviour of the addressees of this Decision can therefore be characterised as a complex infringement consisting of various actions which can be classified either as an agreement or concerted practice, within which the competitors knowingly substituted practical co-operation between them for the risks of competition. Given that the concertation among the participating undertakings occurred on a continuous and regular basis during the infringement period amongst the three main carglass suppliers, with Soliver adhering to the common scheme from 19 November 2001 until 11 March 2003, and that there is evidence of monitoring and correcting measures, those undertakings must have taken account of the information exchanged with competitors in determining their own conduct on the market. The complex of infringements described in section 4.4 therefore presents all the characteristics of an agreement and/or a concerted practice within the meaning of Article 81 of the Treaty and Article 53 of the EEA Agreement.

5.4. Single and continuous infringement

5.4.1. Principles

(497) A complex cartel may properly be viewed as a *single and continuous infringement* for the time frame in which it existed. The Court of First Instance pointed out, inter alia, in the *Cement* case, that the concept of "single agreement" or "single infringement" presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.[711] The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 81 of the Treaty.

(498) It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.

(499) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or even cheating may even occur, but will not however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81(1) of the Treaty where there is a single common and continuing objective.

(500) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common

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[711] See Joined Cases T-25/95 et al. *Cimenteries CBR et al. v Commission*, cited above, paragraph 3699.

unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk.[712]

(501) In fact, as the Court of Justice stated in *Commission v Anic Partecipazioni*[713], the agreements and concerted practices referred to in Article 81(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows, as recently reiterated by the Court of Justice in the *Cement* case[714] that an infringement of that Article may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves an infringement of Article 81 of the Treaty[715]. When the different actions form part of an "overall plan", because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.

5.4.2. Application to the case

(502) In this case, the conduct in question constitutes a single and continuous infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement.

(503) For the period from 10 March 1998 to […] 11 March 2003, the evidence referred to in this Decision shows the existence of a single and continuous collusion in the carglass sector in the EEA between Saint-Gobain, Pilkington, AGC and Soliver (see Chapter 9 for duration in respect of each undertaking). Indeed, the parties expressed their joint intention to behave on the market in a certain way and adhered to a common plan to limit their individual commercial conduct through allocation of supplies of carglass for passenger cars and light commercial vehicles as well as distorting prices regarding supply for carglass parts, with the aim to ensure overall stability in the market.

(504) The infringing activities, which present the characteristics of a single and continuous infringement, consisted of a series of actions that can be qualified as agreements and/or concerted practices covering the products

712 See Case C-49/92 P *Commission v Anic Partecipazioni*, cited above, paragraph 83.
713 See Case C-49/92 P *Commission v Anic Partecipazioni*, cited above.
714 See Cases C-204/00 et al., *Aalborg Portland v Commission*, cited above, paragraph 258.
715 See Case C-49/92 P *Commission v Anic Partecipazioni*, cited above, paragraphs 78-81, 83-85 and 203.

concerned, and which demonstrated a continuous course of action with a common object of restricting competition. These activities are thoroughly described in the factual part, section 4.4., of this Decision. The Commission considers that the documents and other information obtained by it in the context of its investigation together with the information and corroborating material […], constitute credible evidence of a single and continuous infringement.

(505) The anti-competitive activities carried out by Saint-Gobain, Pilkington, AGC and Soliver in relation to their supplies of carglass to car manufacturers established in section 4.4, formed part of the same scheme consisting of distorting competition in the EEA with a view to maintaining artificially high prices and artificially stable market positions. The following factors are relevant in this respect:

– The concerted actions decided in the context of the trilateral and/or bilateral meetings and contacts between the four carglass suppliers pursued one single and common objective, which was to allocate new and reallocate existing supply contracts for car models so as to distort the normal evolution of prices for carglass supplies and to regulate between themselves the market for the supply of carglass to car manufacturers. The carglass suppliers were able to regularly monitor their market positions and, by taking coordinated actions in the context of their responses to car manufacturers' RFQs, to maintain a certain degree of overall stability of their respective market shares.[716]

– As established in section 4.4, all the four carglass suppliers participated in the implementation of a set of measures designed to achieve the above mentioned objective. In particular, they agreed on specific mechanisms for allocating carglass pieces. This included the exchange of price information and other commercially sensitive information as well as coordination of their pricing policies and supply strategies, which allowed them to take concerted actions vis-à-vis the car manufacturers regarding their responses to RFQs issued by car manufacturers and to coordinate, to a large extent, the choice of the supplier, or, in the case of multiple sourcing, the suppliers for any given carglass supply contract. The competitors used concerted reference prices regularly higher than the target price requested by car manufacturers when coordinating cost elements contained in the RFQs such as privacy glass costs, tooling costs, development costs, prototype costs as well as costs linked to particular technical specifications, which were decisive for the car manufacturers' sourcing decisions. As regards allocation of individual contracts, they held regular discussions designed to identify the potential winner of a particular supply contract, as well as those competitors who would not quote at all, or who would quote higher prices than the agreed winner. They agreed for instance to inform the car manufacturer that none of them had sufficient capacity to take on 100% of the order or that the "preselected" winner was to set a price in response to specific RFQs, with the other competitors agreeing to quote

716 See sections 4.1.3.1 and 4.1.3.2 for the market share calculation methods and section 4.3.2 for the monitoring. See also […].

higher prices with a view to keeping their existing market positions, namely the "covering" mechanism[717].As described in section 4.4, the competitors closely monitored both market shares and actual supply and, when necessary, applied correcting measures in the form of compensation which made sure that the overall supply situation in the EEA was in accordance with the concerted allocation of glass parts. At the meetings, the competitors made sure that their individual shares of business of each customer remained more or less stable and would do so for the foreseeable future.[718]

(506) For these reasons it would be artificial to split up such continuous inter-related conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single complex and continuous infringement for the products concerned which progressively manifested itself in agreements and/or concerted practices.

(507) The Commission has demonstrated that the coordination between the cartel participants was not sporadic or isolated but consistently involved the same object, since the same representatives were present at the majority of the meetings and/or contacts during the whole period concerned and the collusion relates to the same products, discussions frequently took place at trilateral meetings across brands or vehicle accounts, monitoring was done not only individually (per vehicle account) but also globally (all vehicle accounts together) in order to maintain a certain market share stability, and the cartel participants also compensated each other within a particular vehicle account or sometimes across vehicle accounts where possible depending on particularly technical requirements of the model in question.[719] These elements can be further detailed as follows:

firstly, the same undertakings, and to a significant extent the same representatives from these undertakings, were involved in the anti-competitive activities concerned. The continuity in representation was ensured by certain individuals who were […] and who were […] and, who directly reported to their […]. These representatives – both […] as well as […] - regularly participated in the trilateral or bilateral meetings or contacts […].[720] The anti-competitive activities also related to the same products, carglass pieces for passenger vehicles as well as for light commercial vehicles.

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717 For examples of "cover" see section 4.4: Renault 28 May 1998, 23 June 1998, 16 September 1998; Renault 20 September 1999, 30 September 1999, 11 November 1999; Peugeot 30 September 1999, 2 November 1999; Peugeot Autumn 2000; Renault mid-2000; BMW, prior to 23 June 2000, 5 November 2000: Volkswagen, year 2000, DaimlerChrysler (Mercedes), end 2000; Fiat, prior to mid-2000; Honda, prior to June 2000, 17 June-17 July 2000, late October/early November 2000; Peugeot, November 2001 Renault, 29 November 2001; BMW, summer 2001; Volkswagen, 18 January 2001; Fiat, 20 June 2001, 29 October 2001; Ford, 2001; Saab, 11 March 2003; Fiat, 11 March 2003, second half of March 2003.

718 See section 4.3.2, paragraphs (110) to (116) and section 4.4, recitals (234) Peugeot 28/7/2000, (314) Peugeot 20/6/2001, (324) Renault 20/6/2001, and (357) several accounts 15/11/2001.

719 See sections 4.1.3.1 and 4.1.3.2. for the market share calculation methods and section 4.3.2 for the monitoring. See also […].

720 See overview of meetings, section 4.2.5. See also recitals from (93) to (97).

secondly, the cartel participants met on at least 18 occasions (see footnote 669 for the list) and discussed across several brands or vehicle accounts at the same meetings. Furthermore, within the context of discussion across vehicle accounts, one particular feature of their single common plan was the fact that the cartel participants compensated each other not only within the same vehicle account but also across accounts where possible (see section 4.5, in particular recital (447)).

thirdly, the competitors Saint-Gobain, Pilkington and AGC closely monitored both market shares and actual supply using their market positions as a reference point for the purposes of the allocation. In particular at the meetings, the competitors made sure that both their individual shares of business of each brand or vehicle account as well as their global shares (that is all vehicle accounts together) remained more or less stable and would do so for the foreseeable future (see recital (461)).[721]

(508) It is also demonstrated in this Decision that the competitors' interests significantly overlapped with each other. The scheme developed by the cartel participants was sufficiently attractive for them to continue to work together in an anti-competitive spirit and with one single object, namely allocation of customers with a view to keeping their respective market positions stable during the infringement period.

5.5. Restriction of competition

(509) The anti-competitive behaviour in this case had the object and effect of restricting competition in the EEA.

(510) Article 81 of the Treaty and Article 53 of the EEA Agreement expressly mention as restrictive of competition agreements which:[722]

– directly or indirectly fix selling prices or any other trading conditions;

– share markets or sources of supply.

(511) More particularly, in this case, the principal measures forming part of the complex of agreements and/or concerted practices as referred to in Article 81 of the Treaty and Article 53 of the EEA Agreement are the allocation of the supply of carglass pieces, with a view to keeping a certain market share stability; price coordination; monitoring of market shares (per vehicle account and globally); correcting measures in the form of compensation and exchange of commercially sensitive information.

(512) Those measures, which were used by the competitors for the purposes of the allocation and form part of a complex of agreements and/or concerted practices, have as their object to restrict competition within the meaning of Article 81 of the Treaty and of Article 53 of the EEA Agreement. By coordinating among themselves the supply of carglass parts to all the major car manufacturers in the EEA, the competitors distorted the normal process

721 See section 4.4: 28/7/2000, 20/6/2001, 20/6/2001, and 15/11/2001.

722 The list is not exhaustive.

of procurement of carglass parts through which the suppliers would, had it not been for the cartel, have competed with each other. The fact that the competitors shared customers and co-ordinated prices is likely to have had a significant impact on carglass deliveries, in particular as the competitors involved, Saint-Gobain, Pilkington and AGC, are the main suppliers and, together with Soliver, jointly account for more than 90% of deliveries of carglass parts in the EEA, making the four suppliers almost unavoidable trading partners.

(513) It is furthermore noted that, even if a previously agreed allocation of a contract was sometimes not implemented in practice, this does not mean that the cartel arrangements did not have an anti-competitive object. It is settled case-law that for the purpose of application of Article 81(1) of the Treaty there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved.[723]

(514) Therefore, the competition-restricting object of the arrangements is sufficient to support the conclusion that Article 81 of the Treaty and Article 53 of the EEA Agreement apply. The likelihood of those arrangements having the effect of restricting competition leads to the same conclusion. Indeed, there are some examples in the factual part of this Decision of the parties assessing the effects of their previous discussions (see recital (117) and the meetings referred to therein) and intending to put in place a compensation mechanism, which support the Commission's appraisal.

5.6. Pilkington and Saint-Gobain's arguments in response to the Statement of Objections in relation to the legal assessment of the facts and the Commission's appraisal

(515) The Commission has already addressed the parties' arguments in relation to specific evidence and parts of the facts when presenting the sequence of events in chronological order in section 4.4 (and 4.5). This section will therefore assess Pilkington's and Saint-Gobain's arguments of a general nature relating to the proof of the infringement and the assessment of the facts and to the definition of a single and continuous infringement relied upon by the Commission.

(516) Firstly, as regards the burden of proof, Pilkington argued that the evidence in the Commission's possession is insufficient to establish its participation in the cartel as described by the Commission. Pilkington argues that the Commission's evidence is too weak and refers in particular to […] which, in its view, would be of too limited probative value and which consequently would not reach the requisite legal standard needed to prove an infringement in a cartel case.

(517) The Commission considers that the participation of Pilkington in the cartel is established on the basis of contemporaneous evidence and […]. The

723 See judgment in Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178.

documents in the Commission's possession show that there was concertation between the cartel participants, including Pilkington.

(518) Regarding the credibility […], Pilkington in particular considers that they are not sufficiently precise and consistent and that they would have been made only for opportunistic reasons.

(519) In this respect it is important to recall that there is no provision or any general principle of Community law that prohibits the Commission from relying on statements made by other incriminated undertakings.[724] […]. They cannot however be regarded as devoid of probative value. Statements which run counter to the interests of the declaring party must in principle be regarded as particularly reliable evidence.[725] The fact of seeking to benefit from the application of the Leniency Notice in order to obtain a reduction in the fine does not, as such, create an incentive to submit distorted evidence. Indeed, any attempt to mislead the Commission could call into question the sincerity and completeness of cooperation of the person seeking to benefit, thereby jeopardising his chances of benefiting from the Leniency Notice.[726] Where statements containing inaccuracies are corrected in a later statement this merely means that the probative value of such statements must be carefully analysed, but does not in itself render the testimony worthless. In fact, recollection of facts does not need to be perfect in order to be credible. […].

(520) More importantly, […] are corroborated by contemporaneous evidence which was gathered independently from […] and confirms […]. In this regard, it is important to underline that the taking place of the meetings and/or contacts described in this Decision was not contested by Saint-Gobain which was frequently present at these meetings and/or contacts. Finally, the evidence […] corroborating documents confirms and reinforces the documents which the Commission found during the inspections. They are therefore sufficiently reliable to prove the infringement.

(521) In the Commission's view, Pilkington wrongly attempts to analyse each meeting and/or contact as an isolated incident in an attempt to remove the behaviour from its context. Its arguments are not convincing as they do not explain its conduct in a way that is consistent with normal competitive behaviour.[727] As Pilkington correctly observes, in accordance with the case-law, the Commission must produce sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place. However, the Court of First Instance has also emphasised that it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement.[728]

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724 See Joined Cases T-67/00 et al. *JFE Engineering v Commission*, cited above, paragraph 192.

725 See Joined Cases T-67/00 et al. *JFE Engineering v Commission*, cited above, paragraph 211.

726 See judgment of 16 November 2006 in Case T-120/04 *Peróxidos Orgánicos SA v Commission*, [2006] ECR II-4446, paragraph 70.

727 See Joined Cases C-204/00 et al. *Aalborg Portland v Commission*, cited above, paragraph 132.

728 See Joined Cases T-67/00 et al. *JFE Engineering v Commission*, cited above, paragraphs 179 and 180.

(522) In fact, several documents described in section 4.4. show that the competitors colluded with each other regarding their market behaviour. The code names used (X, Y, Z), which have not been contested, as well as the nature of the discussions which took place with the direct involvement of Pilkington, were linked to *inter alia* a systematic exchange of commercially sensitive information which clearly did not come from any customer and was clearly aimed at achieving the anti-competitive aims described above.[729]

(523) The Commission, therefore, considers that this abundant evidence in the form of documents, taken together, demonstrates that Pilkington participated in the cartel described in this Decision. The Commission has shown in Section 4.4. that Pilkington intended to contribute to the common objectives pursued by the other cartel participants and that it was aware of the actual conduct planned or put into effect in the pursuit of an overall common objective.[730]

(524) With regard to the second allegation made by Saint-Gobain and Pilkington, that there was no single and continuous infringement, both competitors claim that the meetings and contacts described in section 4.4 did not form part of an overarching plan between the carglass suppliers at an EEA-wide level which was single and continuous.

(525) As illustrated in section 4.4, the Commission considers that it has sufficient evidence to demonstrate that the co-ordination between the cartel participants was not sporadic or isolated, as, firstly, the same representatives were present at the majority of the meetings and/or contacts during the respective periods concerned; secondly, the collusion related to the same products; thirdly, monitoring was done both per vehicle account and globally for all vehicle accounts in order to maintain a certain market share stability; fourthly, on numerous occasions, the cartel participants discussed several accounts at the same meeting and/or contact; and finally, they also compensated each other not only within a particular vehicle account, but also across accounts where possible (see recitals (502) to (508)).

(526) Saint-Gobain does not contest the facts as described in section 4.4.. However, it insists on claiming that the various single instances of concertation cannot be encompassed within an overall plan because of the complexity of the industry and because the collusive behaviour, which it does not dispute, was in fact decentralised in relation to each car vehicle account. In this respect, Saint-Gobain provides a table illustrating that for

729 See for instance trilateral meeting on 28 July 2000, p. 54 of the handwritten notes of Mr […], p. 18233-18235; trilateral meeting on 9 November 2000, p. 81 of the handwritten notes of Mr […], p. 18293-18295; telephone conversation between AGC and Pilkington on 10 September 2001, p. 30 of the handwritten notes of Mr […], p. 18170-71; trilateral meeting on 29 October 2001, p. 31 and 32 of the handwritten notes of Mr […], p. 18172-18175; trilateral meeting on 5 February 2002, p. 13 of the handwritten notes of Mr […], p. 18094.

730 See Joined Cases C-204/00 P et al. *Aalborg Portland v Commission*, cited above, paragraph 83 and Case C-49/92 P *Commission v. Anic Partecipazioni SpA* cited above, paragraph 87.

more or less long periods it was not present at the meetings and/or contacts for a particular vehicle account (see recital (432)).

(527) The Commission does not accept Saint-Gobain's arguments as they seem, in the Commission's view, to be based on the flawed assumption that Saint-Gobain had to be present at each and every meeting in order to be held responsible for the overall cartel. As stated in *JFE Engineering and Others v Commission*, an undertaking may be held responsible even though it is shown to have participated directly only in one or some of its constituent elements if it is shown that it knew, or must have known, that the collusion in which it participated, especially by means of regular meetings organised over several years, was part of an overall plan intended to distort competition and that the overall plan included all the constituent elements of the cartel.[731] This applies in this case, considering in particular that Saint-Gobain has not contested the facts described in section 4.4. The Commission also notes that Saint-Gobain was present to a considerable extent at these meetings and/or contacts (more than 2/3, see tables 2 and 3 in section 4.2.5 and recital (440)), several of which had as their topic discussions across accounts including compensation across accounts in some instances, and which formed part of a single anti-competitive scheme (see Saint-Gobain's arguments in recital (436) and the Commission's appraisal in recital (447)).

6. APPLICATION OF ARTICLE 81(3) OF THE TREATY

(528) The provisions of Article 81(1) of the Treaty may be declared inapplicable pursuant to Article 81(3) where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives and does not afford those undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(529) Restriction of competition being the sole object of the price arrangements which are the subject of this Decision, there is no indication that the agreements and concerted practices between the carglass suppliers entailed any efficiency benefits or otherwise promoted technical or economic progress. Hardcore cartels, like the one which is the subject of this Decision, are, by definition, the most detrimental restrictions of competition, as they benefit only the participating suppliers but not consumers.

(530) Saint-Gobain and Pilkington submitted that […].[732] [733]

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731 See Joined Cases T-67/00 et al. *JFE Engineering v Commission*, cited above, paragraph 370, and Joined Cases T-25/95 et al. *Cimenteries CBR et al. v. Commission,* cited above, paragraph 773.

732 OJ C 3, 6.1.2001, p. 2.

(531) In this Decision dark tinted glass is mentioned […] in relation to one […] meeting on 10 March 1998 (see recital (125), which concerned the supply of finished glass pieces for sun roofs to car manufacturers (with a discussion on final prices), independently of the circumstance that the glass pieces discussed are dark tinted. This meeting therefore forms fully part of the infringement.[734] […].

(532) As described in section 4.1.2., there are a number of commercial relationships between the carglass suppliers and in particular between Saint-Gobain and Pilkington such as licensing, joint ventures, and cross supplies for raw glass some of which may be legitimate agreements. However, on the basis of the facts before the Commission, there are no indications that suggest that the conditions of Article 81(3) of the Treaty could be fulfilled in this case.

7. EFFECT UPON TRADE BETWEEN MEMBER STATES AND BETWEEN EEA CONTRACTING PARTIES

(533) The continuing agreement between the carglass suppliers had an appreciable effect upon trade between Member States and between Contracting Parties of the EEA Agreement.

(534) Article 81 of the Treaty is aimed at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the common market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.

(535) The Court of Justice and the Court of First Instance have consistently held that, "*in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States*".[735] In any event, whilst Article 81 of the Treaty "*does not require that the arrangements referred to in that provision have actually affected trade between Member States, (...) it does require that it be established that those arrangements are capable of having that effect*"[736].

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733 See Saint-Gobain's response to the Statement of Objections, p. 23 and 24 and Pilkington's response to the Statement of Objections, p. 27 to 28. Pilkington does not explicitly refer to Article 81(3) of the Treaty but refers to efficiency benefits.

734 See also recitals (31), (71) and (122) to (126).

735 See Case 42/84 *Remia and Others* [1985] ECR 2545, paragraph 22; see also judgment of the Court of Justice in Case 56/65 *Société Technique Minière* [1966] ECR 282, paragraph 7; and Joined Cases T-25/95 et al. *Cimenteries CBR*, cited above, paragraph 3930.

736 See judgment of the Court of Justice of 23 November 2006 in Case C-238/05 *Asnef-Equifax and others v Commission*, [2006] I-11125, paragraph 43. See also judgment of the Court of Justice in Case C-306/96 *Javico*, [1998] ECR I-1983, paragraphs 16 and 17; see also Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94, *European Night Services v Commission* [1998] ECR II-3141, paragraph 136.

(536) As demonstrated in the "Inter-State trade" in section 2.4, the market for carglass is characterised by a substantial volume of trade between Member States. There is also trade between the Community and EFTA countries belonging to the EEA.

(537) The application of Article 81 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the members' sales that actually involve the transfer of goods from one State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.[737]

(538) In this case, the unlawful arrangements of the four carglass suppliers covered the whole EEA. The existence of collusion as regards allocation of carglass supply contracts, price coordination, monitoring of market shares and exchanges of commercially sensitive information must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.[738]

(539) Insofar as the activities of the cartel related to sales in countries that are not members of the Community or the EEA, they lie outside the scope of this Decision.

8. ADDRESSEES

8.1. Principles applicable

(540) The subjects of Community competition rules are undertakings, a concept which is not identical with that of corporate legal personality for the purposes of commercial or fiscal national law. The undertaking that participated in the infringement is therefore not necessarily the same entity as the precise legal entity within the group of companies whose representatives actually took part in the cartel meetings. The term "undertaking" is not defined in the Treaty. It may refer to any entity engaged in commercial activities. The case-law has confirmed that Article 81 of the Treaty is aimed at economic units which consist of a unitary organisation of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision.[739]

(541) The Community-law concept of "undertaking" has always been a functional one. The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity

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737 See Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, paragraph 304.

738 See Joined Cases 209 to 215 and 218/78 *Van Landewyck and others v Commission* [1980] ECR 3125, paragraph 170.

739 See judgment of the Court of First Instance in Case T-11/89 *Shell International Chemical Company v. Commission* [1992] ECR II-757, paragraph 311. See also Case T-352/94 *Mo och Domsjö AB v. Commission* [1998] ECR II-1989, paragraphs 87-96.

or its precise legal form under national law.[740] For each undertaking that is to be held accountable for infringing Article 81 of the Treaty in this case, one or more legal entities are identified which bear legal liability for the infringement in this case.

(542) It is accordingly necessary to define the undertaking that will be held accountable for the infringement of Article 81 of the Treaty by identifying one or more legal persons to represent the undertaking. According to case-law, "*Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 81 EC and 82 EC if the companies concerned do not determine independently their own conduct on the market*".[741] If a subsidiary does not determine its own conduct on the market independently, the company which directed its market strategy forms a single economic entity with the subsidiary and may thus be held liable for an infringement on the ground that it forms part of the same undertaking.

(543) According to the settled case-law of the Court of Justice and the Court of First Instance, the Commission can assume that a wholly-owned subsidiary essentially follows the instructions given to it by its parent company without needing to check whether the parent company has in fact exercised that power.[742] However, the parent company and/or subsidiary can rebut this presumption by producing sufficient evidence that the subsidiary "decided independently on its own conduct on the market rather than carrying out the instructions given to it by its parent company ".[743]

(544) Where an infringement of Article 81 of the Treaty is found to have been committed, it is necessary to identify a natural or a legal person who was responsible for the operation of the undertaking at the time when the infringement was committed so that it can answer for it.

(545) Liability for illegal behaviour may pass to a successor where the corporate entity, which committed the violation has ceased to exist. When an undertaking committed an infringement of Article 81 of the Treaty and/or Article 53 of the EEA Agreement and when this undertaking later disposed of the assets that were the vehicle of the infringement and withdrew from

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740 Although an 'undertaking' within the meaning of Article 81(1) is not necessarily the same as a company having legal personality, it is necessary for the purposes of applying and enforcing decisions to identify the legal or natural person to whom the decision will be addressed. See Case T-305/94 *PVC*, [1999] ECR, II-0931, paragraph 978.

741 See judgment of the Court of First Instance in Case T-203/01 *Manufacture française des pneumatiques Michelin v Commission* [2003] ECR II-4371, at paragraph 290.

742 See judgment of the Court of First Instance of 15 June 2005 in Joined Cases T-71/03 et al. *Tokai Carbon and Others v Commission* [2005] ECR II-10, paragraph 60; Case T-354/94, see judgment of the Court of First Instance in Case T-354/94, *Stora Kopparbergs Bergslags v Commission* [1998] ECR II-2111, paragraph 80, upheld by the Court of Justice in Case C-286/98P, *Stora Kopparbergs Bergslags* v *Commission* [2000] ECR I-9925, paragraphs 27, 28 and 29; see also judgment of the Court of Justice in Case 107/82, *AEG v Commission*, [1983] ECR 3151, paragraph 50.

743 See Joined Cases T-71/03 etc. *Tokai Carbon and Others v Commission*, cited above, paragraph 61.

the market concerned, the undertaking in question will still be held responsible for the infringement if it is still in existence.[744]

(546) Different conclusions may, however, be reached when a business is transferred from one company to another, in cases where transferor and transferee are linked by economic links, that is to say, when they belong to the same undertaking. In such cases, liability for past behaviour of the transferor may extend to the transferee, notwithstanding the fact that the transferor remains in existence.[745]

(547) In response to the Statement of Objections and referring to Community case-law[746], Asahi and La Compagnie de Saint-Gobain argue that 100% ownership does not on its own create any presumption, but that additional elements are required.

(548) This argument cannot be accepted. As already stated in recital (543), the attribution of liability to the parent company can indeed be sufficiently based on a presumption following from near 100% ownership.[747] Additional indicia can nevertheless be used to corroborate the presumption. The same principles hold true or the purposes of the application of Article 53 of the EEA Agreement.

8.2. Application to this case

(549) In application of the principles referred to in section 8.1, this Decision should be addressed to legal entities that represent and/or are part of the undertakings involved in the cartel as presented in section 2.2.1. These addressees are companies that participated directly in the cartel or parent companies that participated by exercising decisive influence over the conduct and commercial policy of their subsidiaries. Together these companies form part of the undertaking that committed the infringement of Article 81 of the Treaty and of Article 53 of the EEA Agreement.

8.2.1. AGC

8.2.1.1. AGC Flat Glass Europe SA/NV.

(550) Participation in the collusive meetings and/or other contacts took place via Mr […] of Splintex SA (as of January 2002 Splintex Europe SA and as of 1

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744 See judgment of the Court of First Instance in Case T-95/89 *Enichem Anic SpA v. Commission* (Polypropylene) [1991] ECR II-1623 and Case C-49/92P *Commission v. Anic Partecipazioni*, cited above, paragraphs 47-49.

745 See *Aalborg Portland v Commission*, cited above, paragraphs 354 – 360, as confirmed in Case T-43/02 *Jungbunzlauer AG v Commission* [2006] ECR II-3435, paragraphs 132-133. This principle applies to Splintex UK Ltd and Splintex France SA.

746 Asahi referred in particular to the judgment of the Court of First Instance of 26 April 2007 in Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Bolloré and others v Commission* [2007] ECR II-947.

747 See judgment of the Court of First Instance of 12 September 2007 in Case T-30/05 *William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG, v Commission*, not yet reported, paragraphs 146 and 147. See also judgment of 12 December 2007 in Case T-112/05 *Akzo Nobel NV v Commission*, not yet reported, paragraphs 60 to 62.

January 2004 AGC Automotive Europe SA[748]), Mr […] of Splintex UK Ltd, Messrs […] of Splintex France Sarl, Messrs […] of Glaverbel France SA, Mr […] of Splintex Deutschland GmbH (taken over on 1 January 2004 by AGC Automotive Germany GmbH[749]) and Mr […] of Glaverbel Italy S.r.l. throughout the infringement period. These companies should be held liable for their direct involvement in the cartel from 18 May 1998 to 11 March 2003.

(551) Glaverbel France SA, Glaverbel Italy S.r.l., Splintex UK Ltd and Splintex France Sarl were directly or indirectly 100% subsidiaries of Glaverbel SA ("Glaverbel").[750] In Splintex SA and Splintex Deutschland GmbH Glaverbel had a 90% direct and indirect shareholding from March 1997 until 1999, 100% from 2000 until 31 May 2001 and then 90% until 2004.[751]

(552) The carglass activities of the Glaverbel group were originally incorporated under the subsidiary Splintex SA, which in turn had several subsidiaries in various Member States. From 14 August 1996, Glaverbel owned 100% of the shares of Splintex SA.[752] On 31 May 2001, AS Technology, in which Glaverbel owned a 90% shareholding,[753] acquired Splintex SA's automotive activities and changed its name to Splintex Europe SA.[754] Given the influence (directly or indirectly) exercised by the major (or sole) shareholder Glaverbel on all the legal entities involved in the group's carglass activities, there is a presumption of liability of the parent company. Consequently, Glaverbel should be held liable for the period from 18 May 1998 until 11 March 2003.

(553) In addition, the Commission considers that there are further elements which confirm (and thus corroborate the above-mentioned presumption) that Glaverbel exercised decisive influence over the conduct on the market of AGC Automotive, Glaverbel France SA, Glaverbel Italy S.r.l., Splintex UK Ltd and Splintex France Sarl. These elements concern the organisational structure and reporting lines. In the period from 1995 to March 2002, the operational activities of Glaverbel and its subsidiaries in Europe were organised in three functional divisions: Building, Industries

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748 These changes involved both transfer of assets and absorption. The principles laid down in recitals (545) and (546) will therefore be applied.

749 Splintex Deutschland GmbH was absorbed according to the principles laid down in recital (545) with AGC Automotive Germany GmbH on 25 August 2004 with retroactive effect 1 January 2004; see e-mail from Glaverbel of 27 February 2007, p. 49771- 49772, see also Article 18 response of 17 February 2007, annex to question 23A, p. 13.

750 See Article 18 responses by Glaverbel of 13 October 2006, annex 2, pages 6-12, and 2 February 2007, file labelled 182, p. 2, p. 47468-47474. For accessible version, see Article 18 response of 17 February 2006, answer to question 23b, p. 13740 et seq (for consolidated companies) and file 183 (for non consolidated).

751 See e-mail from Glaverbel of 27 February 2007, p. 49771-49772.

752 See Article 18 response by Glaverbel of 13 October 2006, page 3, p. 47451 (annex 2.1).

753 The remaining shareholding was held by Société Régionale d'Investissement de Wallonie (SRIW) which in 1996 had entered into an agreement with Asahi and Glaverbel ("Convention de Reconversion") to gradually sell its shares back to Glaverbel until 2004. See Article 18 response by Glaverbel of 13 October 2006, page 14, p. 47462, see also e-mail from Glaverbel of 27 February 2007 File 183, p. 49771-49772.

754 See Article 18 response by Glaverbel of 13 October 2006, page 3, p. 47451.

and Automotive. The sales director of the Automotive Division was responsible for the overall commercial relationships with all car manufacturers.[755] Account managers would manage the commercial relationship with specific car manufacturers under the supervision of the sales director. The head of the automotive division was also the CEO of Splintex SA and a member of the Glaverbel Executive Committee.[756]

(554) Until 1998, Mr […] was […] of the Glaverbel Group.[757] From 1998 until around March 2002 this post was taken over by Mr […].[758] Messrs […] who participated in the collusive behaviour described in this Decision, either directly or ultimately reported to Mr […] until 1998 and to Mr […] thereafter until June 2003.[759] Mr […] participated himself in the collusive behaviour described in this Decision.

(555) Moreover, Glaverbel, as the 100% owner of AGC Automotive, is required to compile Management Reports which provide a concise high-level discussion of the business being conducted, including automotive glass; this report also contains information on the strategy and the development of the OE-business.[760] Therefore, Glaverbel (now renamed AGC Flat Glass Europe SA/NV) should be held liable for the period from 18 May 1998 to 11 March 2003.

8.2.1.2. Asahi Glass Co. Ltd

(556) Asahi Glass Co Ltd ("Asahi") acquired the majority of Glaverbel's share capital in 1981.[761] As regards Asahi, throughout the period from 18 May 1998 until 11 March 2003) Asahi owned more than 55% of the share capital and, up to December 2002, held more than 60% of the voting rights in Glaverbel's annual shareholders meetings ("Assemblées générales").[762] Due to a low attendance at the meetings of Glaverbel, Asahi had more than 90% of the voting rights at the shareholder meetings prior to 1998. Its share of the voting rights went down to 84% in May 1998 and up again to more than 96% as from May 1999.[763] Such a majority was sufficient to determine the outcome of each annual shareholders' meeting, since decisions were taken by simple majority or, for those cases concerning the change in capital or the dissolution of the company, by a majority of

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755 See Article 18 response by by Asahi of 13 October 2006, page 9, p. 47322.

756 See reply by Glaverbel of 13 October 2006, page 4, p. 47452 and Article 21 of the by-laws of Glaverbel (Comités de direction), p. 48538.

757 See Article 18 response by Glaverbel of 13 October 2006, Annex 3 page 4, p. 47491 and Annex 4, Annual reports of 1998 – 2001, p. 47546-47556.

758 See Article 18 response by Glaverbel of 13 October 2006, Annex 3 page 4, p. 47491 and Annex 4, Annual reports of 1995, 1996, 1997, p. 47542-47545.

759 See Article 18 response by Glaverbel of 17 February 2006, annex to questions 24 and 25, p. 13633 et seq.

760 See Article 18 response by Glaverbel of 13 October 2006, page 6, p. 47454.

761 See Article 18 response by Asahi of 13 October 2006, page 6, p. 47319.

762 See Article 18 response by Asahi of 13 October 2006, page 3, p. 47325.

763 See Article 18 response by Glaverbel of 19 January 2007, annex 2, p. 48545 et seq. The number of Asahi shares represented at the share holder meetings in May 1997 and at the following meeting in May 1998 was [80-90]% and in October 1998 approximately [80-90]%. As from May 1999, the number of Asahi shares represented at the annual shareholders meeting was [90-100]%.

75%.[764] As concerns the Board of Directors (Conseil d'administration), Asahi had over the entire period from 18 May 1998 to 11 March 2003 at least a simple majority[765], which was sufficient to determine the commercial behaviour of Glaverbel.[766] As of December 2002, Asahi owned 100% of the share capital and voting rights in Glaverbel.[767] There is therefore a presumption that Asahi Glass Co Ltd exercised decisive influence over Glaverbel and AGC Automotive.

(557) In addition, the Commission considers that there are further elements which confirm (and thus corroborate the above-mentioned presumption) that Asahi exercised decisive influence over Glaverbel's conduct on the market concerned in the period from 18 May 1998 to 11 March 2003. These elements concern the decision making powers of Asahi as a shareholder in Glaverbel (see recital (558)), working arrangements regarding management communication and reporting lines between Asahi and Glaverbel (see recital (559)) and the integration of AGC Automotive into the world-wide carglass business structure of Asahi (see recital (560)). There were moreover other corroborating documents during the infringement period (see recitals (561), (562) and (563)).

(558) According to the Articles of Association of Glaverbel "*the Board of Directors may confer the daily management to others* […]",[768] the delegation thus being optional. The delegation of the management could easily have been changed by Asahi, had it so wished, either by decision by the Board of Directors (appointed by Asahi) or by decision as a shareholder with more than 60% of the voting rights sufficient to change the Articles of Association given the low attendance of other shareholders at the annual shareholders meetings[769], and even more so after it had acquired 100% of Glaverbel's shares in December 2002.[770] In this case, the conscious choice to delegate the management (and to keep "old" Glaverbel personnel) seems to be simply a business policy decision.

(559) More importantly, Asahi has provided a copy of a memorandum […][771] […].[772]

(560) Another illustration of Asahi's exercise of decisive influence over Glaverbel's conduct and overall commercial policy on the market is the

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764 See Articles 32 and 33 of Glaverbel's articles of association of 17 June 1997, unchanged in the current version of 5 October 1998. Volume 179, annex 1 of Glaverbel's reply dated 19 January 2007, p. 48501-48502.

765 See submission of Asahi of 22 December 2006, p. 48178-48179.

766 See Article 18 of Glaverbel's articles of association of 17 June 1997, unchanged in the current version of 5 October 1998. Volume 179, annex 1 of Glaverbel's reply dated 19 January 2007, p. 48498-48499.

767 See Article 18 response by Asahi of 13 October 2006, page 9, p. 47322.

768 Commission's translation of Article 21 in the Articles of association, according to which "Le conseil d'administration peut conférer la gestion journalière de la société, ainsi que la représentation de la société en ce qui concerne cette gestion […]", p. 48499.

769 See minutes of annual meetings 1997-2002. Reply by Glaverbel to the Commission Art. 18 request dated 15 January 2007, annex 2, p. 48545 et seq, see 49133 et seq.

770 See Article 18 response by Asahi of 13 October 2006, page 9, p. 47322.

771 Asahi's response dated 13 October 2006 to the request for information of 13 September 2006, p. 47434-47443.

772 Asahi's Article 18 response of 13 October 2006, see file 171, p. 47435 to 47447.

reorganisation of the carglass activities within the Asahi group in the spring of 2002. As from 1 April 2002, Asahi has put in place a global business unit under the name 'Automotive Glass Company', based in Japan, which does not have legal personality but is in charge of the worldwide carglass business of Asahi.[773] This unit was headed by Mr […] until 1 April 2004 when he was replaced by Mr […].[774] Moreover, Asahi issued a press release which makes it very clear that the automotive glass business implements an integrated global management with regard to Europe, North America and Japan.[775]

(561) Asahi's decisive influence over its subsidiaries Glaverbel and AGC Automotive is also corroborated by […].

(562) On 8 September 2002 Mr […][776], […], sent two e-mails to among others Messrs […][777], […][778], […] of AGC Automotive, Mr […] of the Automotive Glass Company in Tokyo and […] of AGC Automotive and […], in which, following a joint visit of the […], he outlined the strategy vis-à-vis […], including pricing and volume considerations. Other Japanese executives who received the e-mails were Messrs […].[779] In the e-mails Mr […] in particular referred to a meeting which took place in Paris between Asahi and […] indicating the persons present from Asahi (that is Messrs […]) and stating that "*We agreed to establish a plan to move forward with a study of the […] programme with a target to have joint recommendation by the end of the year. There are a number of issues and some creative possibilites. We will work together to find a mutual solution that can create value*."[780]

(563) In February 2003, the global marketing team of the 'Automotive Glass Company' in Japan released a report on the pricing strategy of AGC worldwide, written by, among others, […].[781] This report identified opportunities in pricing related activities and aimed at actions for higher profitability. […].[782] Mr […], the co-author of the report, acknowledged the work done by […] and other regional staff (including Europe) for all quotations and time taken in meetings and personal interviews in putting together the pricing strategy report. In the executive summary of the report it is moreover stated that […].

Asahi's arguments prior to and in response to the Statement of objections

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773 See Article 18 response by Glaverbel of 13 October 2006, page 9, p. 47322.

774 See Article 18 response by Glaverbel of 17 February 2006, Annexes to questions 24 and 25, (table of Mr. […]), p. 13633 et seq (p. 13641).

775 Press release of 6 March 2003, http://www.agc.co.jp/english/news/2003/0306_a.pdf

776 […].

777 […].

778 […].

779 […].

780 See document labelled CC7, p. 1495-1497. For pricing and volume considerations see in particular p. 1495. The Start of production of the Mondeo was in 2006, see p. 1495.

781 See […] , document labelled SM36, p. 1397-1394.

782 See document labelled SM36, p. 2 of the report, p. 1389.

(564) Asahi submits in its response to the Statement of Objections that it should not be held liable for the anti-competitive conduct relating to the carglass activities of Glaverbel which was carried out by Glaverbel's subsidiary AGC Automotive, for the infringement period concerned as it did not take part in the illegal arrangements, it was not even aware of it, and it did not exercise decisive influence over the commercial conduct of its subsidiary Glaverbel either during the period when it did not have a 100% shareholding or during the period when it did have a 100% shareholding. Asahi puts forward the following main arguments in its response and in two subsequent submissions dated 22 November 2007 and 20 December 2007.

(565) Firstly, as regards the presumption of decisive influence over its subsidiaries Glaverbel and AGC Automotive, Asahi disagrees with the Commission's interpretation of the case law of the Community Courts. According to Asahi, a parent company should be held liable for its subsidiary's unlawful conduct only when it actually exercised influence over that subsidiary's day-to-day management. As opposed to the merger control context, the mere ability to exercise decisive influence over another company is not sufficient to establish that the controlling and the controlled entities belong to the same undertaking. It submits that in order to hold liable the parent company, independently of 100% ownership or not, the Commission has to prove that Asahi issued instructions concerning the strategic commercial conduct of Glaverbel and AGC Automotive and/or that Glaverbel and AGC Automotive carried out in all material respects Asahi's instructions with regard to their strategic commercial conduct. Such instructions include instructions in relation to the subsidiaries' day-to-day management.[783]

(566) Moreover, in relation to the presumption, Asahi disagrees with the Commission (see paragraph 402 of the Statement of Objections) that the 100% ownership of the parent company's subsidiary is sufficient to establish the presumption that the parent company actually exercised decisive influence over the subsidiary's commercial conduct and to shift the burden of proof from the Commission to the parent company/subsidiary. Asahi considers that the burden of proof does not shift in the case of a 100% shareholding.

(567) Lastly, Asahi also claims that less than 100% ownership is even more insufficient to establish a presumption which shifts the burden of proving the (lack of) actual exercise of decisive influence over a subsidiary's commercial conduct from the Commission to the parent and concludes that, given the lack of any presumption, the burden of proving the decisive influence over its subsidiary does not shift.[784] In this respect, Asahi disagrees with the fact that the Commission goes even further stating that such a presumption can be established even in the absence of a 100% shareholding and be based on following factual elements: the parent company holds the majority of its subsidiary's voting rights and share

783 See Asahi's response to the Statement of Objections, p. 10 and 11.

784 See Asahi's response to the Statement of Objections, p. 12 and 13.

capital, is able to determine the outcome of its subsidiary's shareholders meetings and appoints the majority of the members of its subsidiary's Board of Directors (see recitals (556) and (557).

(568) As to the last point, Asahi considers, firstly, that by definition a parent company holds the majority of the share capital and voting rights of its subsidiaries and that this cannot be used as such to establish any presumption. Secondly, the fact that Asahi could have determined the outcome of Glaverbel's shareholders meetings is irrelevant because no decision concerning Glaverbel's day-to-day management or commercial policy was taken in the relevant period. Thirdly, the decision-making powers held by Glaverbel's shareholders were conferred by operation of law and, finally, the fact that Asahi appointed the majority of the members of Glaverbel's Board of Directors is equally irrelevant. According to Asahi, Glaverbel's Board of Directors had delegated the management to the Executive Committee and the Board of Director's role was therefore limited to the approval of the budget, annual accounts and certain important investments.[785]

(569) With regard to the sub-delegating powers referred to by the Commission (see recital (558) above), Asahi takes the view that the "optional" nature of the sub-delegation of powers within Glaverbel and the fact that it could have been modified by Asahi at any time cannot constitute evidence that Asahi exercised decisive influence over Glaverbel but that it illustrates that Glaverbel managed its personnel independently from Asahi.[786]

(570) Moreover, Asahi considers that for the purposes of assessing decisive influence over a subsidiary the additional factual elements referred to by the Commission in the Statement of Objections are either irrelevant or lack probative value and that the Commission therefore has failed to corroborate the presumption of decisive influence. These additional factual elements concern […].

(571) As for the memorandum, […].[787]

(572) As regards […].[788]

(573) In relation to the e-mail exchange of […].[789]

(574) Another element referred to by the Commission concerns the […].[790][791][792]

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785 See Asahi's response to the Statement of Objections, p. 15 to 17.

786 See Asahi's response to the Statement of Objections, p. 17.

787 See Asahi's response to the Statement of Objections, p. 18-19.

788 See Asahi's response to the Statement of Objections, p. 19-20.

789 See Asahi's submission of 22 November 2007, annex 2, p. 2.

790 See Asahi's response to the Statement of Objections, p. 26.

791 See Asahi's submission of 20 December 2007, p. 3.

792 See Commission Decision of 20 October 2004 relating to a proceeding under Article 81(1) of the EC Treaty (Case COMP/C.38.238) — Raw Tobacco Spain, (OJ L 102, 19.4.2007, p.14). See Asahi's response to the Statement of Objections, p. 26.

(575) Asahi moreover refers to the conglomerate model it has adopted in order to maximise operative efficiency. This means that it is not directly involved in the management of its local business activities but delegates and decentralises control and decision-making functions. Glaverbel's local management was independent in this regard as the Executive Committee of Glaverbel had broad management powers and as no Asahi employee was ever appointed to this Committee. It also points out that there were other important minority shareholders and that Glaverbel's Board of Directors also included independent Directors.[793] Asahi also stresses the difference between Asahi/Glaverbel versus Glaverbel/AGC. Whereas there was an active involvement by Glaverbel in AGC's strategic commercial decisions this was not the case for Asahi and Glaverbel and/or AGC.[794]

(576) Finally, Asahi refers to the legal doctrine of "piercing the corporate veil", according to which a parent company is only held liable in extreme circumstances. Asahi points out that in several jurisdictions Asahi would not be found liable for Glaverbel's actions in the light of this doctrine.

The Commission's assessment of Asahi's arguments

(577) The Commission disagrees with the arguments put forward by Asahi that it did not exercise decisive influence over its subsidiary Glaverbel for the period concerned for the following reasons.

(578) The fact that the Commission acknowledges that Asahi was not directly involved in the infringement and may not have been aware of it does not prevent the Commission from holding Asahi liable with its subsidiaries which participated directly in the anti-competitive behaviour. Proof of direct involvement of the parent company in or awareness of the anti-competitive activities is not necessary. According to the Court of Justice, "[i]*t falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement*".[795] It suffices that both the parent and its subsidiary form part of a unitary organisation which pursues a specific economic aim on a long-term basis, and which can contribute to an infringement of competition law. This conclusion is supported by abundant case-law[796], which consistently refers to an absence, on the part of the subsidiary, of autonomy in determining its course of action in the market and not, more specifically, with respect to the infringement.

(579) Asahi attempts to rebut the presumption of liability created by the fact that it directly or indirectly owned less than and close to 100% (including 100%) of the subsidiaries that were directly involved in the anti-competitive activities (see recital 1) and to which this Decision is addressed. Asahi tries to do so by submitting that the day-to-day operations of its subsidiaries are carried out independently from any precise

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793 See Asahi's response to the Statement of Objections, p. 22-23.

794 See Asahi's response to the Statement of Objections, p. 24.

795 Case C-279/98 P *Cascades v Commission,* [2000] ECR I-9693, paragraph 78.

796 See, for instance, Case 48/69 *ICI v Commission,* [1972] ECR 619, in particular paragraph 134, or Case 107/82 *AEG v Commission,* [1983] ECR 3151, paragraph 50.

instructions from it. The Commission does not accept this argument. That subsidiaries perform day-to-day operations without precise instructions from the group management is entirely normal in any well-run group and does not prove that the subsidiary in question is an autonomous actor on the market. In respect of normal day-to-day operations, it is not that the subsidiary has to rebut the presumption by proving its autonomy, but precisely in respect of the most important strategic decisions a company can face, such as what line of business to be in, whether to merge with or acquire other companies, when and where to invest, from whom to buy inputs, to whom to sell outputs, what is to be done with the profits the subsidiary generates, who is to appointed to lead the subsidiary, whether the subsidiary has a reporting obligation to other group entities, whether the subsidiary must operate within strategic objectives set by group management. General assertions of commercial autonomy unsupported by convincing evidence regarding such key types of commercial decisions are not sufficient in this regard.[797]

(580) Regarding the reference made by Asahi to the merger control context (see recital (565)), the Commission's position is not to apply "control" in the sense of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)[798], that is, "the possibility to exercise a decisive influence" is in itself automatically sufficient to attribute liability to a parent company. As the Court of Justice found in *AEG v Commission*, confirmed by other judgments[799], consideration should still be given to the question whether the parent company actually made use of its powers.[800] In this case, the Commission is able to establish that the parent company exercised decisive influence over its subsidiary's commercial conduct (see recitals (556) to (563)). Moreover, in recitals (584) to (587), the Commission counters Asahi's arguments in further detail in relation to these additional elements which illustrate why the Commission considers that Asahi exercised decisive influence over Glaverbel.

(581) Asahi's view on the reporting lines and the additional elements used by the Commission cannot be accepted. The existence of reporting lines, specific communication principles as well as the other corroborating documents relating to its subsidiary's commercial conduct and price setting activities illustrate that the parent company had put in place a mechanism which allowed it to supervise its subsidiary's business activities with a view to ensuring that they were in accordance with the commercial objectives and strategies set by the parent.

(582) Asahi's arguments relating to its business activities and conglomerate model (see recital (575)) can be used to highlight that Asahi and Glaverbel are part of one single undertaking. The fact that the parent company has decentralised decision-making functions is not decisive as regards the

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797 Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission*, cited above, paragraphs 27, 28 and 29.

798 OJ L 24, 29.1.2004, p. 1.

799 Case C-310/ P *BPB Industries and British Gypsum v Commission* [1985] ECR I-865.

800 Case 107/82 *AEG v Commission* [1983] ECR 3151.

question whether it should be considered to constitute a single economic unit with the operational units in the group. The division of tasks is a normal phenomenon within a group of companies. As regards the 'Automotive Glass Company', as stated in recital (572), it comprises the carglass subsidiaries of Asahi Glass Company Limited and, as such, constitutes a part of the group business structure. An economic unit by definition performs all of the main functions of an economic operator within the legal entities of which it is composed. Group companies and business sectors that are dependent on a corporate centre for their investments and finances and for their leadership cannot be considered to constitute an economic unit in their own right.

(583) In addition, Asahi's reasoning as regards the delegation of powers to the Executive Committee cannot be accepted. First of all, Asahi's decision not to change any remaining management system cannot prove the absence of decisive influence. The exercise of decisive influence is not a question of the ability to successfully manage the business in question, but of the exercise of influence upon it. It is a fact that during the infringement period a majority of the voting members in the Glaverbel Board of Directors simultaneously held positions at management level in Asahi.[801] This composition of the Board shows the extent of the parent company's involvement in the subsidiary and put it in a position to exercise decisive influence over the subsidiary's commercial policy on the market.[802] Even if the (day-to-day) management functions of Glaverbel's Board of Directors were delegated to the Executive Committee, this does not mean that the Board of Directors did not exercise decisive influence on the subsidiary's commercial policy, as is the normal role of the directors in a company. Through the involvement of Asahi management personnel on the board there was thus a direct influence by the parent company itself. Also, as stated in recital (558), the delegation of management functions is optional and lies entirely in the hands of Asahi Glass Company Limited. It is practically a universal feature of a well-run business needing specialised knowledge that powers are given to the local management of a wholly-controlled subsidiary. In line with this, it is only natural that the European subsidiary decides issues relating to the specificities of the European market.

(584) As regards the memorandum (see recital (559)), […].[803]

(585) Moreover, […].

(586) In relation to the two e-mails sent by […].

(587) Regarding the […].

(588) The Commission's assessment of one of the parent companies' liability in the Commission Decision *Raw Tobacco Spain* referred to in recital (574) is

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801 See submission of Asahi of 22 December 2006, p. 48178 to 48184.

802 See judgment in Joined Cases T-109/02 et al., *Bolloré v Commission*, cited above, at paragraph 138.

803 See Asahi's additional response dated 13 October 2006 to the request for information of 13 September 2006, p. 47434-47443.

not relevant for this case as it has established that Asahi exercises decisive influence over its subsidiary.

(589) As to "piercing the corporate veil", a reference to different areas of law where such a doctrine may be used is inappropriate in the context of an infringement of Article 81 of the Treaty.

(590) In the light of the foregoing, Asahi Glass Company Limited should be held jointly and severally liable with its subsidiaries Glaverbel SA (now AGC Flat Glass Europe SA/NV), AGC Automotive Europe SA, Splintex UK Ltd., Splintex France Sarl, Glaverbel France SA, Splintex Deutschland GmbH (now AGC Automotive Germany GmbH) and Glaverbel Italy S.r.l.

8.2.1.3. Conclusion

(591) Given that the presumption following from the 100% shareholding that existed at the time of the infringement as well as the additional elements mentionedin section 8.2.1.2, the Commission considers that Asahi exercised decisive influence over the conduct of its subsidiaries during the entire period from 18 May 1998 to 11 March 2003. Asahi Glass Co Ltd should therefore be held jointly and severally liable with Glaverbel SA (now AGC Flat Glass Europe SA/NV), AGC Automotive Europe SA, Splintex UK Ltd., Splintex France Sarl, Glaverbel France SA, Splintex Deutschland GmbH (now AGC Automotive Germany GmbH) and Glaverbel Italy Srl, as they are part of the undertaking that committed the infringement during the period from 18 May 1998 to 11 March 2003.

(592) This Decision should therefore be addressed to Asahi Glass Co Ltd, Glaverbel SA (now AGC Flat Glass Europe SA/NV), AGC Automotive Europe SA, Splintex UK Ltd., Splintex France Sarl, Glaverbel France SA, Splintex Deutschland GmbH (now AGC Automotive Germany GmbH) and Glaverbel Italy S.r.l.

8.2.2. Saint-Gobain

8.2.2.1. Saint-Gobain Sekurit France SA and Saint-Gobain Sekurit Deutschland GmbH & Co. KG

(593) Messrs. […], […] (see recital (603)), […], employee of Saint-Gobain Sekurit France SA, and Messrs. […], employees of Saint-Gobain Sekurit Deutschland GmbH & Co KG, participated in the infringement described in this Decision. Both Saint-Gobain Sekurit France SA and Saint-Gobain Sekurit Deutschland GmbH & Co. KG should be held liable for their direct involvement in the cartel.

8.2.2.2. Saint-Gobain Glass France SA

(594) Throughout the period from 10 March 1998 to 11 March 2003, Saint-Gobain Glass France SA owned 100% of Saint-Gobain Sekurit France SA.[804] In line with the case-law referred to in recitals (540) to (548) there is

[804] See annex 9 of the Article 18 response of 26 January 2006 by Saint-Gobain Glass France, p. 14391

therefore a presumption that Saint-Gobain Glass France SA exercised decisive influence over Saint-Gobain Sekurit France SA (see recitals (540) to (546)).

(595) In addition, the Commission considers that there are further elements which confirm (and thus corroborate the above-mentioned presumption) that Saint-Gobain Glass France SA exercised decisive influence over the market conduct of Saint-Gobain Sekurit France SA as well as Saint-Gobain Sekurit Deutschland GmbH & Co. KG and other Sekurit companies. These elements concern the functioning and organisation of the Saint-Gobain Group, in particular the Car Glass Sector and the fact that the […] held overlapping positions within the group and the reporting within the Group (see recitals (600) to (605)).

(596) Carglass belongs to the Flat Glass Sector ("Pôle Vitrage") of La Compagnie de Saint-Gobain SA ("Saint-Gobain"), which is one out of five business sectors of Saint-Gobain. Within the Flat Glass Sector there are four business units. Carglass constitutes one of these four business units. The sales of carglass to OEM are vested with the Saint-Gobain Sekurit ("SGS") family of companies. There are SGS firms in, for example, Germany, SGS Deutschland, Belgium, SGS Benelux and France, SGS France. All operational SGS companies are under the Saint-Gobain Sekurit International ("SGSI") umbrella, which is a purely organisational structure without legal personality but which was established to ensure that all entities within SGS worked under a common commercial policy.[805]

(597) The […] from 1995 until January 2001, followed by Mr […] from January 2001 onwards. Mr […] was in charge of […] from 1994 until the end of 2004, assisted by Messrs […] from 1996 until 2000 and […] from March 2000 until the end of 2004.[806] All decisions of the Car Glass business unit, comprised of the SGS companies, were ultimately adopted by Mr […].[807] The Commission has copied e-mails which demonstrate that Mr […] was involved in the day-to-day management of the carglass business also after he stepped down as […]. For instance, in September 2002, Mr […] intervened regarding a particular project, the acoustic PVB, including the amount of royalties for a licence to Pilkington.[808]

(598) Given that Saint-Gobain Glass France is responsible for the commercial policy of the Sekurit companies, that Mr […] from 1995 to 2001 and continues to be […], Saint-Gobain Glass France SA should be held liable for its subsidiaries which directly participated in the illegal behaviour.

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805 See Article 18 response by Saint-Gobain Glass France of 24 February 2006, p. 22-23, p. 18670-18671 and 18857-18889 (annex 9).

806 See Article 18 response by Saint-Gobain Glass France of 24 February 2006, annex 10, p. 18871 and 18890-18892. See also pages 14425 and 14426.

807 See reply by Saint-Gobain of 4 October 2006, page 4, p. 47204.

808 See following documents copied by the Commission during the inspections: e-mail exchange of 11 September 2002, File 21, CD Rom, p. 40158, e-mails of 7 December 1999, p. 5877, 12 February 2003, p. 5917, 29 April 2002, p. 5920, 19 January 2000, p. 5966, 6 November 2000, p. 6008, 8 July 2002, p. 3827-3828, 26 April 1999, p. 4035, 25 February 2002, 4915, and 10 December 2001, p. 8127.

8.2.2.3. La Compagnie de Saint-Gobain SA

The Commission's findings

(599) Throughout the period from 10 March 1998 to 11 March 2003 la Compagnie de Saint-Gobain (for the purposes of this section "**La Compagnie**") was the 100 per cent (indirect) owner of Saint-Gobain Glass France SA, which should be held liable as certain of its employees directly participated in the cartel (see recitals (97) and (597)).[809] In line with the case-law referred to in section 8.1 in recitals (540) to (548), there is therefore a presumption that La Compagnie exercised decisive influence over Saint-Gobain Glass France SA. Consequently, La Compagnie and Saint-Gobain Glass France SA together form part of the undertaking that committed the infringement.

(600) In addition, the Commission considers that there are further corroborating elements which confirm that La Compagnie exercised decisive influence over Saint-Gobain Glass France SA's strategic commercial conduct on the market concerned for the period from 10 March 1998 to 11 March 2003. These elements regard the business structure of the Saint-Gobain group, the functions of Mr […], who held overlapping positions within the Saint-Gobain group, and the composition of the Board of Directors of Saint-Gobain Glass France SA.

(601) Firstly, the group is presented on the Saint-Gobain website as a world leader in each of its fields of competence and there exist common principles which apply to all companies of the group as well as a Group Strategy.[810] The business structure of the group, as described in recitals (13) and (14), which encompasses all of the group's competences, was set up by decision of the group's ultimate parent company, La Compagnie. The activities of the Saint-Gobain Group are organised in specific business sectors, which indicates an intention of the group to keep special focus on the different businesses (which – in accordance with the by-laws of the parent company - are carried out by the subsidiaries), and for La Compagnie to remain the master of the ultimate structure and conductof the group. These business sectors, which manage their operations and define and implement commercial and marketing strategies relating to their own activity, nevertheless form part of a basic operational management framework for the implementation of the Group's business model.[811]

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809 The Stora judgments confirm that the existence of a chain of companies through which decisive influence is exercised does not affect the assessment of whether parent and subsidiary form an economic unit. The Court of Justice has considered that the presumption that a wholly owned subsidiary does not determine independently its conduct on the market applies whether the shareholding is a direct or an indirect one, (Case T-203/01, *Michelin v Commission*, cited above, at paragraph 290).

810 See http://www.saint-gobain.com/en/html/groupe/panorama.asp, http://www.saint-gobain.com/en/html/groupe/rh_principes.asp and http://www.saint-gobain.com/en/html/groupe/strategie.asp

811 Annual reports of La Compagnie de Saint-Gobain 2001, p.52, http://www.saint-gobain.com/fr/html/investisseurs/rapport/ra2001fr.pdf 2002, p.80, http://www.saint-gobain.com/en/html/investisseurs/rapport/ra2002en.pdf 2003, p.31, http://www.saint-gobain.com/en/html/investisseurs/rapport/ra2003en.pdf 2004, p.30-31, http://www.saint-

Initiatives undertaken and results achieved are in line with priorities and objectives set for all Group businesses as defined by the general management of La Compagnie.[812]

(602) Although the business orientations (for example, business plans and budgets) and important operational business decisions are also prepared at business unit level they are ultimately adopted by the […].[813] As described in recital (596), carglass constitutes one of four business units within the Flat Glass Sector, which in turn is one of five business sectors of the Saint-Gobain Group.[814]

(603) Secondly, there are hierarchical structures, reporting lines and multifunctional managers, which further support the view that the carglass business units did not enjoy an autonomous position on the market. In particular, Mr […] fulfils a number of functions within the Saint-Gobain Group. At the level of La Compagnie he is […].[815] Moreover, he is – as stated in recital (602) – the […]. Lastly, Mr […] is […].[816] Furthermore, he was […] until 2001. Moreover, Mr […] participates in the meetings of […][817] and is responsible for […]. Also, from the Saint-Gobain website it can be seen that Mr. […] is a member of […][818] and also in the Annual reports[819] he is presented as a member of […]. As […], while not intervening on an everyday basis in the commercial policy, he does intervene regarding important decisions.

(604) Thirdly, regarding the composition of the Members of the Board of Saint-Gobain Glass France, three of the members of the Board of Directors of Saint-Gobain Glass France SA held at the same time management positions within La Compagnie.[820]

(605) Finally, La Compagnie (and the intermediate holding company Vertec SAS) and Saint-Gobain Glass France SA are registered at the same address.

Arguments by La Compagnie in response to the Statement of Objections

(606) La Compagnie contests being held liable for the behaviour of Saint-Gobain Glass France SA. It emphasises that the principle of the personal nature of criminal responsibility must be observed. It considers that in light of the

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gobain.com/en/html/investisseurs/rapport/ra2004en.pdf 2005, page 5 http://www.saint-gobain.com/en/html/investisseurs/rapport/2005-Annual-Report.pdf

812 See Article 18 response by Saint-Gobain Glass France of 4 October 2006, p. 47203 and 47204, see also http://www.saint-gobain.com/en/html/groupe/organisation.asp

813 See Article 18 response by Saint-Gobain Glass France of 4 October 2006, p. 47204.

814 See http://www.saint-gobain.com/en/html/groupe/organisation.asp

815 See p. 3674. See also annual report of La Compagnie de Saint-Gobain 2005, page 32, http://www.saint-gobain.com/en/html/investisseurs/rapport/2005-Annual-Report.pdf.

816 See reply by Saint-Gobain Glass France of 13 October 2006, annex 2 and 3, p. 48030.

817 Answer to the question regarding Mr […]'s functions in La Compagnie: […], see page 54745.

818 http://www.saint-gobain.com/en/html/investisseurs/equipe.asp

819 Annual report 2005, see p. 21839 and annual report 2004, see http://www.saint-gobain.com/en/html/investisseurs/rapport/ra2004en.pdf

820 See Article 18 response of Saint-Gobain Glass France of 4 October 2006, p. 47242.

case law of the Court of Justice of the European Communities[821], the presumption of 100% ownership is not in itself sufficient to attribute liability to it for the conduct of its subsidiary and that something more needs to be shown in the form of, for instance, additional elements of decisive influence.[822] By applying an irrefutable presumption, La Compagnie considers that the Commission misuses its powers.[823]

(607) La Compagnie considers that the elements used by the Commission are not only insufficient but also irrelevant and in particular wrongly interpreted. The elements used by the Commission such as the business structure of the Saint-Gobain group, the functions of Mr […] and the composition of the Board of Directors of Saint-Gobain Glass France SA are simply not pertinent as reporting lines form part of the ordinary governance structure of many corporate groups and are not relevant for the purposes of assessing decisive influence.[824]

(608) Firstly, La Compagnie underlines that the business units are autonomous in a system which is decentralised and in which the day-to-day management of the carglass companies is carried out by each relevant business unit including in particular strategic decision-making.[825] La Compagnie moreover considers that the Commission has only described the existence of a group of companies, which in itself cannot indicate that it exercised decisive influence over its very large number of subsidiaries. La Compagnie is only a holding company that does not intervene in the businesses of its subsidiaries. It clarified that it defines the overall strategy of the Group, but that it does not give any instructions as regards the operations of the subsidiaries and that the different sectors are autonomous.

(609) Secondly, concerning Mr […]'s role within the Saint-Gobain group, La Compagnie disagrees with the Commission's assessment. Mr […] does not work at the executive level of La Compagnie nor is he a representative thereof. La Compagnie moreover disagrees with the Commission's finding in paragraph 440 of the Statement of Objections that Mr […] was part of the executive management of the Saint-Gobain group and clarifies that he has never been a member of the Executive Committee. The two Committees of which Mr […] is a member are the […] and the […] which, according to La Compagnie, are purely internal units for the exchange of information of common interests without decision-making powers. La Compagnie also argues that the title […] is purely honorary with no particular responsibilities or executive powers. It finally submitted that, as […], it is only logical that Mr. […] is […].[826] Finally, as regards reporting lines, La Compagnie emphasised that they only follow from the legal structure of the Group. It clarified that the information given by Saint-

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821 See judgment in Case C-286/98 P *Stora Kopparbergs Berglags v Commission*, cited above, and judgment in Joined Cases T-109/02 et al. *Bolloré SA v Commission*, cited above.

822 See La Compagnie de Saint-Gobain's response to the Statement of Objections, p. 2 and 3.

823 See La Compagnie de Saint-Gobain's response to the Statement of Objections, p. 10.

824 See La Compagnie de Saint-Gobain's response to the Statement of Objections, p. 4.

825 See also reply by Saint-Gobain Glass France of 4 October 2006, p. 4, p 48068 (annex 2) and p. 48070-48077 (annex 3).

826 See La Compagnie de Saint-Gobain's response to the Statement of Objections, p. 7 and 8.

Gobain to the Commission only concerned the Flat Glass Sector of the Group, with the reporting lines ending at the […], that is Mr […].

(610) Thirdly, regarding the composition of the Members of the Board at Saint-Gobain Glass France, La Compagnie points out that the Commission has not explained in further detail why it is used as an element. In any case, it considers that the composition of the Board of Directors of Saint-Gobain Glass France is irrelevant for the purposes of assessing whether a parent company has exercised decisive influence over its subsidiary.[827]

(611) Finally, as regards the minutes containing answers by Mr […] to questions asked by the Commission during the inspection, La Compagnie confirms that these answers are factually correct. However, La Compagnie takes the view that the information given by Mr […] cannot under any circumstances be used for proving that it exercised decisive influence over its subsidiary and reiterates its answers provided in the response of 21 June 2007 to the Statement of Objections.

Commission's assessment of La Compagnie's arguments

(612) The Commission maintains its view as set out in the Statement of Objections against La Compagnie for the reasons explained below. The Commission is of the opinion that it does clearly not apply a non-rebuttable presumption as contended by La Compagnie. The parent company and/or subsidiary can in fact reverse the presumption by submitting sufficient evidence that the subsidiary "*decided independently on its own conduct on the market rather than carrying out the instructions given to it by its parent company and such that they fall outside the definition of an undertaking*".[828] However, since a presumption builds on the fact that what is presumed *typically* occurs where the conditions on which the presumption is built apply (here: exercise of decisive influence over a subsidiary in case of 100%, or near 100%, ownership) the rebuttal of the presumption requires clear and unequivocal evidence to the contrary.

(613) As regards the principle of the personal nature of criminal responsibility, in holding certain legal entities responsible as representatives of the undertaking that committed the infringement, this principle is respected.[829] Article 81 of the Treaty is addressed to "undertakings" which may comprise several legal entities. The principle is not breached as long as the legal entities are held liable on the basis of circumstances which pertain to their own role and conduct within the undertaking. In the case of a parent company, liability is established on the basis of the exercise of effective control on the commercial policy of the subsidiary.

(614) In accordance with the case law of the Court of Justice, and, as a result of the presumption as established by case-law, it is for La Compagnie (and/or its subsidiary) to submit sufficient evidence of the autonomous behaviour

827 See La Compagnie de Saint-Gobain's response to the Statement of Objections, p. 9.

828 See Joined Cases T-71/03 etc *Tokai Carbon and Others v Commission*, cited above, paragraph 61.

829 See, in a different context, the reasoning in Case C-49/92 P *Commission v Anic Partecipazioni Sp*Acited above, paragraphs 83 - 84.

of its subsidiary Saint-Gobain Glass France SA in order to avoid being held liable for its subsidiary's participation in the infringement. However, La Compagnie has not provided any evidence that would support its arguments to reverse the presumption.

(615) As regards the arguments relating to La Compagnie's role as a holding company referred to in recital (608), they rather indicate that La Compagnie and Saint-Gobain Glass France SA are indeed part of one single undertaking. The fact that the parent company itself is not involved in production and sale of flat glass, part of which becomes processed glass (including carglass), is not decisive as regards the question whether it should be considered to constitute a single economic unit with the operational units of the group. The division of tasks is a normal phenomenon within a group of companies. An economic unit by definition performs all of the main functions of an economic operator within the legal entities of which it is composed. Group companies and business sectors that are dependent on a corporate centre for the basic orientation of the commercial strategy and operations, for their investments and finances, for their legal affairs and for their leadership cannot be considered to constitute an economic unit in their own right. The Saint-Gobain group must be considered to constitute such a single economic unit. La Compagnie defines the overall strategy of the Saint-Gobain group and runs functional departments such as Human Resources, Finance, Research and Development, Legal and Fiscal Affairs, Corporate Planning and Communications.[830]

(616) The reasoning regarding the […] and the reporting referred to in recital (609) cannot be accepted. During the inspections Mr. […] replied to the Commission's questions as to his functions in, among others, La Compagnie.[831] Mr. […] explained that as […] [832], and that he was also […].

(617) As to the committees in which he participates, Mr. […] explained that […][833]. […].

(618) Even though la Compagnie claimed that the title […] is only honorific, it is noted that according to Saint-Gobain's website, Mr […] is a member of […][834] and also in the Annual Reports[835] he is presented as a member of […]. According to the Saint-Gobain website, […].

(619) Moreover, it appears that Mr […] holds multiple functions within the Group and his work is not limited to only the Flat Glass Sector, notably he

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830 See La Compagnie de Saint-Gobain's response to the Statement of Objections, p. 5. The Commission notes that according to the website http://www.saint-gobain.com/en/html/groupe/organisation.asp the function of "Internal Audit and Business Control" is also performed by La Compagnie.

831 See pp. 54741 to 54746.

832 The Commission notes that according to Annual Report of 2004, p. 31, available at http://www.saint-gobain.com/en/html/investisseurs/rapport/ra2004en.pdf, Mr. […] was replaced by Mr. […].

833 See […].

834 http://www.saint-gobain.com/en/html/investisseurs/equipe.asp

835 For 2005 annual report see p. 21839. For 2004 annual report, see http://www.saint-gobain.com/en/html/investisseurs/rapport/ra2004en.pdf.

is […]. It is obvious that the information and knowledge that one individual obtains from one function, he or she uses and considers also in the other functions for the benefit of the undertaking.

(620) As regards the Board of Directors of Saint-Gobain Glass France SA, in addition to Mr […], who holds the positions of […] within La Compagnie, two other members also hold positions within that company: Messrs […] were employed by La Compagnie and held the titles of […], respectively[836]. Mr […] is also part of the Group Management[837]. Such composition of the Board of Saint-Gobain Glass France SA shows the extent of the parent company's involvement in the subsidiary's commercial policy and indeed put it in a position to exercise decisive influence over the subsidiary's commercial policy on the market.[838] The fact that the parent company and the subsidiary are located at the same address facilitates a unified approach in pursuance of a specific economic aim, and thus supports the good functioning of the undertaking.

(621) La Compagnie owns Saint-Gobain Glass France SA via the intermediate holding company Vertec SAS. In line with the reasoning in recital (601), the ultimate parent company and the operating subsidiary involved in the infringement are the proper representatives of the undertaking responsible for the purposes of Community law. In this case it is not necessary for the intermediate holding company to also be held liable. This Decision should therefore not be addressed to Vertec SAS.

8.2.2.4. Conclusion

(622) For the reasons stated in recitals (599) to (605), La Compagnie de Saint-Gobain should be held jointly and severally liable with its subsidiaries, Saint-Gobain Sekurit France SA, Saint-Gobain Sekurit Deutschland GmbH & Co KG and Saint-Gobain Glass France SA, as they form part of the undertaking that committed the infringement.

(623) This Decision should therefore be addressed to La Compagnie de Saint-Gobain, Saint-Gobain Glass France SA, Saint-Gobain Sekurit France SA and Saint-Gobain Sekurit Deutschland GmbH & Co KG.

8.2.3. Pilkington

8.2.3.1. Pilkington Automotive Limited

(624) Mr […], employee of Pilkington Automotive Limited, directly participated in the infringement described in this Decision. Therefore, Pilkington Automotive Limited should be held liable for its direct involvement in the cartel.

836 See Article 18 response of Saint-Gobain Glass France of 4 October 2006, p. 47242.

837 See annual report 2004, at http://www.saint-gobain.com/en/html/investisseurs/rapport/ra2004en.pdf

838 See judgment in Joined Cases T-109/02 et al. *Bolloré et al. v Commission*, cited above, paragraph 138.

8.2.3.2. Pilkington Automotive Deutschland GmbH

(625) Mr […], employee of Pilkington Automotive Deutschland GmbH, directly participated in the infringement described in this Decision. Therefore, Pilkington Automotive Deutschland GmbH should be held liable for its direct involvement in the cartel.

8.2.3.3. Pilkington Italia SpA

(626) Mr […], employee of Pilkington Italia SpA, directly participated in the infringement described in this Decision. Therefore, Pilkington Italia SpA should be held liable for its direct involvement in the cartel.

8.2.3.4. Pilkington Group Limited (formerly Pilkington plc)

(627) Pilkington Group Limited is the former Pilkington plc which was renamed Pilkington Group Limited after the takeover by Nippon Sheet Glass effective 16 June 2006 and the subsequent delisting of Pilkington plc.[839] Pilkington Group Limited is the 100 per cent (indirect) owner of Pilkington Italia SpA and Pilkington Automotive Limited.[840]

(628) As to Pilkington Automotive Deutschland GmbH, Pilkington Group Limited exercises direct and unlimited control over this company. Pilkington Group Limited, via its 100% subsidiary Pilkington Holding GmbH owns directly and indirectly 96.5% of Pilkington Deutschland AG, which is the direct 100%owner of Pilkington Automotive Deutschland GmbH (the remaining approximately 3.5% of the shares are held by a third party). Pilkington Group Limited nevertheless exercises direct and unlimited control over Pilkington Deutschland AG because its 100% subsidiary Pilkington Holding GmbH concluded an inter-company agreement with Pilkington Deutschland AG.[841] This agreement contains clauses which show that Pilkington Holding GmbH had at its disposal a mechanism to exercise influence on its subsidiary, so that Pilkington Deutschland AG was not able to autonomously determine its behaviour on the market. According to the agreement Pilkington Deutschland AG submits the management of its company to Pilkington Holding GmbH and the latter company is entitled to give instructions to the Board of Pilkington Deutschland AG. Thus, the business management of Pilkington Deutschland AG is executed by Pilkington Holding GmbH. Moreover, the profits of Pilkington Deutschland AG are transferred to Pilkington Holding GmbH and that company also stands for the losses of Pilkington Deutschland AG. Accordingly, Pilkington Deutschland AG bears no business risk and retains its profits within the group, being completely controlled by Pilkington Holding GmbH.

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839 See reply by Pilkington of 22 September 2006, page 2, p. 45498-45499.

840 The *Stora* judgments confirm that the existence of a chain of companies through which decisive influence is exercised does not affect the assessment of whether parent and subsidiary form an economic unit. The Court of Justice has considered that the presumption that a wholly owned subsidiary does not determine independently its conduct on the market applies whether the shareholding is a direct or an indirect one (see *Michelin v Commission*, cited above, paragraph 290).

841 Article 18 response by Pilkington of 24 February 2006, Annex 2c (Beherrschungs- und Gewinnabführungsvertrag of 16.1.1989), file 178, p. 48435.

(629) There is therefore a presumption that Pilkington Group Limited exercised decisive influence over Pilkington Italia SpA, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Automotive Limited. Consequently, these companies together form part of the undertaking that committed the infringement.

(630) In addition to the presumption referred to in recital 629 there are also other elements that attest that Pilkington Automotive Limited, Pilkington Automotive Deutschland GmbH and Pilkington Italia SpA and Pilkington Holding GmbH have not acted autonomously on the market, but that Pilkington Group Limited exercised decisive control over these entities. These elements regard the business structure of the group and evidence of reporting.

(631) The carglass activities of Pilkington Group Limited are united under the name Pilkington Automotive which is a business structure in parallel to its legal corporate structure. Pilkington has evolved over time from a number of different subsidiary companies operating autonomously into a single operation after 1996, […].[842] This process of centralisation was substantially completed in 1998, and from that time onwards these subsidiaries ceased to operate autonomously; they implemented the strategic and commercial policy developed by the parent company.[843] The head of Pilkington Automotive over the entire relevant period was […].[844] […].

(632) Evidence of reporting between Mr […], Mr […] and Mr […] can be found in the following documents copied by the Commission during inspections:

– e-mail exchange between Mr […], and Messrs […], of 20 June 2001, in which price increases for certain glass pieces to Renault were discussed in great detail;[845]

– handwritten notes of a meeting in September 2002 between Saint-Gobain and Pilkington, in which Messrs […] participated and during which topics such as setting up a joint venture and agreeing on the royalties for a licence for extrusion technology between the two companies.[846]

(633) The Commission considers that these documents and e-mails show that Pilkington Group Limited was constantly informed about the commercial conduct of its subsidiaries and exercised control and direction.

(634) The Commission notes that in its response to the Statement of Objections Pilkington has not contested these Commission's findings.

842 See […].
843 See Article 18 response by Pilkington of 11 October 2006, page 2, p. 45535-45536.
844 See Article 18 response by Pilkington of 24 February 2006, annex 5, page 1, p. 15794.
845 Document labelled NW37, p 7971-7972.
846 Document labelled WE7, p. 2738-2739.

8.2.3.5. Conclusion

(635) The Commission considers that the existence of a group business structure which includes all automotive business, sub-divided into geographic areas, with a central sales and marketing director at European level, […], confirms that Pilkington Italia SpA, Pilkington Automotive Deutschland GmbH and Pilkington Automotive Limited did not enjoy an autonomous position on the market, […].

(636) Therefore, Pilkington Group Limited should be held jointly and severally liable with its subsidiaries Pilkington Italia SpA, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Automotive Limited as they form an economic unit and are part of the same undertaking. Pilkington Group Limited controls those companies via several other intermediate companies, including holding companies without any operational activities. The Commission considers the ultimate parent company and the operating subsidiaries involved in the infringement (including Pilkington Holding GmbH which controls and governs Pilkington Deutschland AG as described in recital (628)) to be the proper representatives for the undertaking which is responsible for the purposes of Community law, and that it is not necessary for intermediate companies to also be held liable. This Decision should therefore not be addressed to such intermediate companies.

(637) This Decision should therefore be addressed to Pilkington Group Limited, Pilkington Italia SpA, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Automotive Limited.

8.2.4. Soliver

(638) Messrs […], employees of Soliver NV, directly participated in the infringement described in this Decision. Therefore, Soliver NV should be held liable for its direct involvement in the infringement.

9. DURATION OF THE INFRINGEMENT

(639) The Commission's assessment under the competition rules and the application of any fines relates to the period from 10 March 1998 to 11 March 2003. 10 March 1998 is the date of the first documented collusive meeting between employees of Pilkington and Saint-Gobain (see recitals (122) and (125)). This date should therefore be considered to be the starting point of the infringement for Pilkington and Saint-Gobain. […]. On the basis of the evidence at the Commission's disposal, the starting point of the infringement for AGC is considered to be 18 May 1998. The starting point of the infringement for Soliver is considered to be 19 November 2001 (see recital (362)), as this is the date of its first evidence of the participation in the arrangements with at least one of the colluding parties.

(640) Saint-Gobain, AGC and Soliver participated in the collusive contacts until 11 March 2003. […], the Commission considers the contacts on 11 March 2003 as the relevant date for establishing the end of the infringement for AGC and Saint-Gobain In relation to Pilkington, the Commission observes

that the last documentary evidence of its participation is dated from 3 September 2002 (see recital (408)).

(641) Asahi Glass Co Ltd, AGC Flat Glass Europe SA/NV (formerly Glaverbel SA), AGC Automotive Europe SA, Splintex UK Ltd, Splintex France Sarl, AGC Automotive Germany GmbH, Glaverbel France SA and Glaverbel Italy participated in the agreements and concerted practices described in section 4.4 throughout the period from 18 May1998 to 11 March 2003. The duration of the infringement for these companies is therefore four years and 10 months.

(642) La Compagnie de Saint-Gobain SA, Saint-Gobain Glass France SA, Saint-Gobain Sekurit France SA and Saint-Gobain Sekurit Deutschland GmbH & Co KG, participated in the agreements and concerted practices described in section 4.4 throughout the period from 10 March 1998 to 11 March 2003. The duration of the infringement is therefore 5 years.

(643) Pilkington Group Limited, Pilkington Automotive Ltd, Pilkington Holding GmbH, Pilkington Automotive Deutschland GmbH & Co KG and Pilkington Italia SpA participated in the agreements and concerted practices described in section 4.4 throughout the period from 10 March 1998 to 3 September 2002. The duration of the infringement is therefore 4 years and 5 months.

(644) Soliver NV directly participated in the the agreements and/or concerted practices described in section 4.4 from 19 November 2001 to 11 March 2003. The duration of the infringement is therefore 1 year and 4 months.

10. REMEDIES

10.1. Article 7 of Regulation (EC) No 1/2003

(645) Where the Commission finds that there is an infringement of Article 81 of the Treaty and of Article 53 of the EEA Agreement it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

(646) While it appears from the facts that the infringement effectively ended in March 2003, it is not possible to declare with absolute certainty that the infringement has ceased taking into account the secret nature of the meetings between the four suppliers. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and henceforth to refrain from any agreement, concerted practice which might have the same or a similar object or effect.

10.2. Article 23(2) of Regulation (EC) No 1/2003 (Article 15(2) of Regulation No 17)

(647) Under Article 23(2) of Regulation No 1/2003[847], the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 81 of the Treaty and/or Article 53 of the EEA Agreement. Under Article 15(2) of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty[848], which was applicable during the infringement, the fine imposed on each undertaking participating in the infringementcould not exceed 10% of its total turnover in the preceding business year. The same limitation results from Article 23(2) of Regulation (EC) No 1/2003.

(648) Pursuant to Article 23(3) of Regulation (EC) No 1/2003 and Regulation No 17 the Commission must, in fixing the amount of the fine, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in Regulation (EC) No 1/2003.

(649) In doing so, the Commission will set the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement will be assessed on an individual basis. In particular, the Commission will reflect in the fines imposed any aggravating or mitigating circumstances pertaining to each undertaking. In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003[849] (hereafter, "the 2006 Guidelines on Fines"). Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice.

(650) In response to the Statement of Objections Pilkington, Glaverbel and Asahi claimed that any fine imposed on them should be determined according to the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty[850] (hereafter, "the 1998 Guidelines on Fines") and not the 2006 Guidelines on Fines.

(651) In particular, Glaverbel and Asahi argued that applying the 2006 Guidelines on Fines to them, which would certainly increase the amount of the fines imposed, would not only run counter to the Community law principles of non-retroactivity, legal certainty and legitimate expectations but also jeopardise the very purpose of the leniency policy.

(652) As regards the principle of non-retroactivity and legal certainty they argued that Article 7 of the Convention for the Protection of Human Rights and

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847 Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 81 and 82] of the EC Treaty […] shall apply *mutatis mutandis*" (OJ L 305/6 of 30 November 1994).

848 OJ 13, 21.2.1962, p.204/62. Regulation repealed by Regulation (EC) No 1/2003.

849 OJ C 210, 1.9.2006, p. 2.

850 OJ C9, 14.1.1998, p. 3.

Fundamental Freedoms[851] prohibits the imposition of penalties more severe than those applicable when the offence in question was committed and stated that both legal rules and the violations thereof must be clear, precise and predictable. As regards legitimate expectations, Asahi and Glaverbel referred to point 29 of the Leniency Notice and to the fact that when applying for leniency they acquired a legitimate expectation that any fine would be calculated under the set of rules in force at the time of its application, namely the 1998 Guidelines on Fines, which were binding on the Commission. They argued that the previous case law recognising the Commission's discretion to change its policy as regards the level of the fines at any time was developed in a situation where there were no prior fines guidelines. Furthermore, it is the timing of the issuance of the Statement of Objections which was the decisive factor to apply the 2006 Guidelines on Fines and this timing was exclusively in the hands of the Commission. Lastly, leaving an immunity/leniency applicant in the uncertainty as to the method applied to set fines would jeopardise the leniency policy and undertakings' incentives to cooperate with the Commission.

(653) The Commission disagrees with these arguments. It is settled case-law that in determining the amount of the fines, the Commission has a wide discretion. It is also settled case-law that the fact that the Commission imposed fines of a certain level for certain types of infringement does not mean that it is stopped from raising that level to ensure the implementation of Community competition policy.[852]

(654) The Court of Justice has previously established that undertakings involved in an administrative procedure in which fines may be imposed cannot acquire legitimate expectations from the fact that the Commission will not exceed the level of fines previously imposed, so that a legitimate expectation cannot be based on a method of calculating fines. This was also found to be the case for undertakings which had decided to cooperate with the Commission under the Leniency Notice before a new method of calculating fines was adopted, a method which was subsequently applied to calculate the fines imposed on the said undertakings.[853] The Court also held in the same circumstances that the Commission had not breached the principle of non-retroactivity.[854]

(655) The Commission does not accept the argument that this case law would not apply in this case because prior guidelines already existed. The fact that the Commission cannot depart from its own guidelines in cases where they

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851 Signed in Rome on 4 November 1950.

852 Joined Cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission* [1983] ECR 1825, paragraph 109 and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and others v Commission*, [2005] ECR I-5428, paragraphs 169 and 172.

853 Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri and others v Commission*, cited above, in particular paragraphs 159, 162, 163 and 173.

854 Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri and others v Commission*, cited above, in particular paragraphs 213 to 232.

apply without providing any justification[855], does not mean that it cannot use its discretion and adopt new guidelines, within the limits of Regulation (EC) No 1/2003. As regards Asahi and Glaverbel's argument on the legitimate expectations under point 29 of the Leniency Notice, these apply to the treatment of the applicant under the leniency regime and not to the level of fines they will receive.

(656) As regards the Commission's responsibility on the timing of the issuance and notification of the Statement of Objections, the Commission notes that the fact that it is the 2006 Guidelines on Fines which apply is not due to the length of proceedings since they became applicable only a year and a half after the inspections. The Commission also notes that […], even after the entry into force of the 2006 Guidelines on Fines.

(657) Lastly, the Commission notes that at paragraph (488) of the Statement of Objections it already stated the intention to apply the 2006 Guidelines on Fines to the case concerned by this Decision.

10.3. The basic amount of the fines

10.3.1. Calculation of the value of sales

(658) Pursuant to the 2006 Guidelines on Fines, in determining the basic amount of the fine to be imposed the Commission takes into account the value of each undertaking's sales of goods to which the infringement directly or indirectly relates in the geographic area concerned within the EEA for the last full business year of the undertaking's participation in the infringement.

(659) Saint-Gobain Glass France, which bears the operational responsibility for all the carglass activities of La Compagnie, argues in its written response to the Statement of Objections that, when determining the value of sales, the Commission should only take into account certain vehicle accounts and, within these accounts, only a certain number of carglass pieces and/or carsets.[856] Pilkington argues in its written response, along the same lines as Saint-Gobain Glass France, that only the actual carglass pieces which formed the object of the club discussions should be taken into account when determining the relevant sales, that is, the Commission should not take all the contracts or all the vehicles within a certain vehicle account into consideration.[857] Soliver, in its written response, similarly argues that regarding the relevant sales, only two contracts should be taken into account when determining the affected sales.[858] Asahi is also of the opinion that when assessing the gravity of the infringement for Glaverbel, each car manufacturer should be considered separately in line with the approach

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855 See for instance T-224/00 *Archer Daniels Midland v Commission*, [2003] ECR II-2597, paragraph 182 and judgment of the Court of Justice of 8 February 2007 in Case C-3/06 P *Groupe Danone v Commission* [2007] ECR I-1331, paragraph 80.

856 See Saint-Gobain Glass France's response to the Statement of Objections, p. 54.

857 See Pilkington's response to the Statement of Objections, p. 208.

858 See Soliver's response to the Statement of Objections, p. 28.

adopted by the Commission in section 4.4 of the Statement of Objections.[859]

(660) The arguments of Saint-Gobain Glass France, Pilkington, Soliver and Asahi cannot be accepted for two main reasons. Firstly, as stated in the Statement of Objections and in this Decision, the infringement consisted of agreements and/or concerted practices having as their purpose the allocation between those undertakings of the supply of carglass pieces to *all* major car manufacturers in the EEA and having as their common economic aim to keep market shares as stable as possible between the cartel participants. All groups of car manufacturers with a production line in the EEA (the notable exception being […]) were discussed during the numerous meetings and contacts as illustrated in section 4.4. of this Decision, The fact that there is evidence that each car manufacturer group was subject to contacts at least once leads the Commission to conclude that all supplies of carglass formed part of the infringement. Whether a given contract was actually subject to individual meetings depended on the then prevailing allocation of supplies and the perceived need to take measures to maintain the respective market shares as well as on the ability of each individual contract to entail an appreciable change in the share of the overall supplies envisaged by each cartel participant.

(661) The fact that all carglass pieces earmarked to OEM formed part of the cartel arrangements can, secondly, be demonstrated by the way the cartel operated. After the initial discussions on the allocation of specific supply contracts, the competitors monitored such allocation and if necessary they agreed on a compensation mechanism. More specifically, as set out in this Decision, the members of the cartel decided on how to share carglass supplies between themselves through coordination of the pricing policies and supply strategies, applying certain collusive measures, such as "covering" for each other (see for instance recitals (103) and (327)), or claiming lack of "capacity" to supply a certain customer (see for instance recitals (102) and (351)); as well as attempts to avoid a full break-down of prices despite of requests by the car manufacturers, or refusal to disclose certain price elements to the car manufacturers when submitting RFQs to the latter (see for instance recitals (105) and (106)). The aim of the cartel was the stability of the competitors' shares of supplies for all car accounts (see for instance recitals (323) concerning the Renault account, (326) and (348) concerning the Fiat account, and (115) concerning BMW, Skoda, Fiat, Nissan, VW, Peugeot, DaimlerChrysler, Volvo, GM and Renault in terms of what the competitors "owed" to each other for these accounts). The carglass suppliers then monitored through comparable reference methods actual shares of supply, which were based on square metres, volume and/or carsets (see recitals (76) to (86), (111) to (114), (321) and (384)). As from December 2001, it is demonstrated that the competitors intended to refine these reference methods for the purposes of the allocation of carglass supplies and that they aimed at continuing to keep market shares stable between each other (see recitals (110) to (116), (259), (266), (321), (323) and (326)). To this end, the competitors also intended to

[859] See Asahi's response to the Statement of Objections, p.46.

compensate each other when the initially envisaged allocation did not work in practice (see for instance recital (119), see also (226), (227), (230), (237), (264), (306), (340), (359), (386) and (400)-(401)).

(662) In this respect it is important to note that, as the evidence in the Commission's file shows, the competitors applied these mechanisms not only to a limited number of individual accounts, as Saint-Gobain seems to suggest, but also across accounts. This application of the cartel mechanisms across accounts is firstly demonstrated by the fact that the competitors discussed several accounts during at least 15 meetings (see recital (439)). Secondly, the monitoring of market shares was carried out across all accounts, and concerned both awarded contracts for all car manufacturers (see recitals (76) to (86) in conjunction with recitals (111) to (114)) as well as per account (see for instance recitals (323), (324), (325) and (340)). Thirdly, the competitors in some instances agreed to compensate each other for losses (that is to say, where initially agreed splits turned out differently and needed to be rectified), which would be determined by comparing car account volumes initially agreed on (see recital (119)), or by comparing what the competitors owed to each other for all the car accounts in terms of annual sales turnover (see recital (115)). These compensation agreements applied also across accounts (see recitals (197), (386) and (403)).

(663) To conclude, the fact that specific evidence is not available for each and every discussion that took place on the respective car accounts within the overall arrangements does not limit the determination of the relevant value of sales to only those accounts for which such specific evidence is available. Cartel arrangements are by their very nature secret agreements and evidence will in most, if not in all cases, remain incomplete.

(664) Although the economic aim of the cartelists was from the beginning to keep their respective market shares at EEA-level stable, the Commission has considered the fact that in the first two and a half years, from March 1998 to the first half of 2000, it has direct evidence of cartel activity for only a part of all European car manufacturers. While this does not mean that other car manufacturers were not the subject of cartel discussions in the first two and a half years, the Commission, in view of the particularities of this case, has taken account of those two and a half years as a "roll-out phase" during which the cartelists only progressively developed their collusive behaviour towards all car manufacturers. It is likely that in this trial phase the carglass suppliers rigged the bids only within selected large accounts. Consequently, the Commission takes as relevant sales for the calculation of the fines for the first ramp-up period only sales by carglass suppliers to those car manufacturers for which there is direct evidence that they were subject to cartel arrangements.

(665) At the end of the infringement period, i.e. between the break down of the Club discussions on 3 September 2002 and the end of the infringement in March 2003, it can be argued that the cartel activity slowed down after the exit of the important player Pilkington. Therefore, the Commission takes into account as relevant only those sales relating to manufacturers for which there is direct evidence that they were subject to cartel contacts in

this period which, again, is a very conservative interpretation of the evidence in favour of the four undertakings concerned.

(666) As for the period from 1 July 2000 to 3 September 2002, however, the accounts discussed at meetings and/or contacts covered 90% or more of the EEA sales for each carglass supplier. In the light of the number of contacts and of the evidence available referred to in the Decision, in particular the documents relating to the contacts of 6 December 2001 and of 5 July 2002[860], it is presumed that the whole market was permeated by the cartel arrangements during this period. Therefore, the entire EEA-sales in the period from 1 July 2000 until 3 September 2002 are taken into account.

(667) In sum, the Commission has, in line with the 2006 Guidelines on fines, applied a more calibrated approach and reduced the weight of the roll-out period between the beginning of the infringement and 30 June 2000 as well as the final stage from September 2002 to 11 March 2003 by only taking account of each carglass supplier's value of sales to those car manufacturers for which there is direct evidence in the Decision of cartel arrangements. The sales relevant for the calculation of the fines are then determined for each carglass supplier on the basis of the total sales in all three periods weighted as described above, divided through the months of participation in the infringement and multiplied by 12 to build an annual average. The average EEA value of sales of carglass pieces will therefore be taken into account as follows:

Undertaking	**Average EEA Sales (EUR)**
Saint-Gobain	[…]
Pilkington	[…]
AGC	[…]
Soliver	[…]

Nota bene: the table has been drafted on the basis of the figures delivered by the parties following the requests for information pursuant to Article 18 Regulation 1/2003 sent on 25 July 2008 and does not take into account sales of carglass pieces for vehicles >3.5 tonnes or sales when the carglass supplier acted as tier 2 supplier. The figures are audited to the extent possible and are rounded to EUR thousands.

10.3.2. Determination of the basic amount of the fine

(668) As provided in the 2006 Guidelines on fines, the basic amount of the fine will be related to a proportion of the value of sales, depending on the degree of gravity of the infringement multiplied by the number of years of infringement.

Gravity

860 See document labelled EF7, p. 663-665, and document labelled CC4, p.1490-92.

(669) As a general rule, the proportion of the value of sales taken into account will be set at a level of up to 30% of the value of sales. In order to decide whether the proportion of the value of sales should be at the lower or at the higher end of the scale, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.

(a) Nature

(670) In this case the competitors agreed to allocate customers through coordination of prices. Allocation of customers is by its very nature among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for this infringement should be set at the higher end of the scale.

(b) Combined market share

(671) The average relevant combined market share in the EEA of the four undertakings participating during the period of the infringement was approximately […]%.

(c) Geographic scope

(672) The geographic scope of the infringement was the EEA (see recitals (2), (3), (33) and (533) to (539)).

(d) Implementation

(673) As indicated in recitals (117) and (447), it has been established that the infringement was at times implemented. Nonetheless, the Commission will not take into account this element when calculating the basic amount of the fine.

(674) In their written responses to the Statement of Objections Pilkington and Saint-Gobain Glass France raised various arguments aiming at attenuating the gravity of the infringement. Pilkington argued that "*the so-called "Club" discussions almost never resulted in any actual agreements or understandings between the parties*"[861]. Sometimes the parties did not act as agreed. In other words, a certain "*gamesmanship*" was played where competitors got information from others only to their own competitive advantage. If some level of infringement were anyway to be detected by the Commission, Pilkington submits that the discussions did not yield any concrete understandings or agreements, let alone any actual implementation. As regards Pilkington's level of participation, Pilkington claims that its participation was reduced, if compared with that of AGC and Saint-Gobain, which carried on bilateral discussions after 3 September 2002, when Pilkington instead declared to end its participation in the "Club" meetings.

[861] See page 203 of Pilkington's response to the Statement of Objections.

(675) Saint-Gobain Glass France pointed out that the object was not to limit production or quantities sold with a view to increasing prices. On the contrary, the purpose of the contacts was to optimise the production lines because of their inelasticity vis-à-vis the car manufacturers' demand.[862] According to this company, the strong bargaining power of customers should be taken into account by the Commission when assessing the gravity[863]. The carglass producers were facing a car manufacturer market which is a tight oligopoly and car manufacturers were able to impose ambitious prices as well as high rebates on their carglass suppliers.

(676) Pilkington's arguments do not attenuate the gravity of the infringement. On the basis of the evidence available in the Commission's file, it has been concluded that there were agreements, which Pilkington actually admits (see recital (448)), and that the arrangements were at times implemented, including by Pilkington. By stating that "[the] *discussions **almost** never resulted in any actual agreements*" (emphasis added), Pilkington implicitely accepts that, at least sometimes, the discussions have resulted in the conclusion of actual agreements.

(677) Saint-Gobain Glass France's arguments are also not convincing. The record shows that the meetings and contacts clearly went beyond any legitimate objectives. As to the alleged strong market power by the car manufacturers, the Commission observes that Saint-Gobain Glass France has not adduced any evidence that would suggest that the carglass producers were forced into the anti-competitive arrangement by the car manufacturers. It is the Commission's view that the genesis of the collusion were the discussions on privacy glass, which evolved into the overall plan to allocate costumers. This confirms that the decision of the Big Three was voluntary and all competitors benefited from this plan. However, the Commission acknowledges that the vehicle manufacturers enjoyed countervailing buyer power which enabled them to devise counterstrategies, such as the systematic use of second supplier strategies, which allowed them in some cases to reduce or thwart the coordinated actions. As a result, as pointed out in recitals (117), (447) and (673), the allocation of contracts by the carglass producers did not always work out in practice.

(678) In conclusion and taking into account the factors relating to the nature of the infringement, the combined market share of the parties and the geographic scope, the proportion of the value of sales of each undertaking involved to be used to establish the basic amount of the fines to be imposed should be set at 16%.

Duration

(679) In order to take fully into account the duration of the participation of each undertaking in the infringement, the amount determined on the basis of the value of sales, as described at recitals (658) to (674), should be multiplied by the number of years of participation in the infringement. Periods of less

862 See page 42 of Saint-Gobain Glass France's response to the Statement of Objections.

863 Saint-Gobain Glass France makes reference to the judgment of the Court of First Instance in Case T-322/01 *Roquette Frères v Commission* [2006] ECR II-3137, paragraphs 149-150.

than six months will be counted as half a year; periods longer than six months but shorter than one year will be counted as a full year.

(680) As set out in Chapter 9, the undertakings were involved in the infringement at least during the following periods:

– AGC, from 18 May 1998 to 11 March 2003, namely a period of 4 years and 10 months;

– Saint-Gobain, from 10 March 1998 to 11 March 2003, namely a period of 5 years;

– Pilkington, from 10 March 1998 to 3 September 2002, namely a period of 4 years and 5 months;

– Soliver, from 19 November 2001 to 11 March 2003, namely a period of 1 year and 4 months.

(681) As a result, the multiplying factors to be applied to the amount determined according to the calculation set out in recital (678) should therefore be 4.5 for Pilkington, 5 for Saint-Gobain and AGC and 1.5 for Soliver.

Additional amount

(682) In order to deter undertakings from entering into horizontal price fixing agreements such as the one at issue in this case, the basic amount of the fines to be imposed should be increased by an additional amount, as indicated in point 25 of the 2006 Guidelines on Fines. For this purpose, having considered the circumstances of the case and, in particular, the factors discussed in recitals (669) to (673), it is concluded that an additional amount of 16% of the value of sales would be appropriate.

10.3.3. Conclusion on the basic amounts

(683) The amounts of the fine to be imposed on each undertaking should therefore be the following:

All amounts are in EUR

- Saint-Gobain [...]

- Pilkington [...]

- AGC [...]

- Soliver [...]

10.4. Adjustments to the basic amount

10.4.1. *Aggravating circumstances*

10.4.1.1. Asahi/Glaverbel

(684) There are no aggravating circumstances for AGC in this case.

10.4.1.2. Saint-Gobain

(685) At the time the infringement took place, Saint-Gobain had already been the addressee of two previous Commission decisions concerning cartel activities which are relevant as aggravating circumstances in this case[864].

(686) The fact that an undertaking has been repeating the same or similar type of anticompetitive conduct shows that the penalties it had been subjected to in the past did not prompt it to change its anticompetitive conduct. That kind of anticompetitive conduct constitutes an aggravating circumstance that can justify an increase of 60% in the basic amount of the fine to be imposed on this undertaking.

(687) Saint-Gobain Glass France argues that taking into account recidivism would infringe the legal principles of non-retroactivity and of proportionality. In particular, applying the multiplying factor foreseen by the Commission's 2006 Guidelines on Fines would result in an exaggerated increase which was not imaginable at the time of the infringement. Furthermore, Saint-Gobain Glass France argues that the proportionality principle would also be breached because, instead of being one of the elements to be taken into account when calculating the fine, the 2006 Guidelines on Fines would give it a preponderant importance compared with other factors.

(688) The Commission observes that the fact that the undertaking concerned has again infringed the Community competition rules with the same or similar type of anticompetitive conduct is a sufficiently clear indication that the previous decisions and the fines which were imposed on it were not sufficient to ensure effective deterrence vis-à-vis this undertaking or that this undertaking is not easily amenable to comply with the competition rules. The Commission's 2006 Guidelines on Fines take into account this kind of conduct and indicate the need to punish more severely those undertakings that repeatedly infringed Community's competition rules in the past.

10.4.1.3. Pilkington

(689) There are no aggravating circumstances for Pilkington in this case.

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[864] Commission Decision of 23 July 1984 in Case IV/30.988 – Flat Glass (Benelux), OJ L 212, 8.8.1984, p. 13 and Commission Decision of 7 December 1988 in Case IV/31.906 – Flat glass (Italy), OJ L 33, 4.2.1989, p. 44.

10.4.1.4. Soliver

(690) There are no aggravating circumstances for Soliver in this case.

10.4.2. *Mitigating circumstances*

10.4.2.1. AGC

Early termination of the infringement

(691) AGC argues that immediately after the Commission carried out its inspections in February 2005, AGC ended its participation in the infringement and ensured that any participation in it ceased.

(692) The Commission does not accept this argument. Cartel infringements of the kind established in this decision are by their very nature very serious infringements of Article 81 of the Treaty. Participants in these infringements must be assumed to be fully aware that they have been engaged in illegal activities. In the Commission's view, in such cases of deliberate illegal behaviour, the fact that a company terminates this behaviour at the moment the Commission intervenes, or even before, does not merit any particular reward other than that the period of infringement of the company concerned is shorter than it would otherwise have been. Indeed, in accordance with established case law, if the infringement had continued after the intervention of the Commission, this would have constituted an aggravating circumstance.

Lack of harm for customers

(693) AGC furthermore claims that the fact that there is no sufficient evidence that the infringement resulted in any harm to customers should be taken into account.

(694) The Commission points out that it is not necessary for the Commission to show any effects once it is established that the object of the agreements was to distort competition. The fact that the implementation may have been not or only partially successful in achieving the intended impact on the market, because of buyer resistance and/or remaining competition, does not change the Commission legal assessment.

10.4.2.2. Saint-Gobain

(695) Saint-Gobain has not submitted that mitigating circumstances should apply.

10.4.2.3. Pilkington

(696) In its written response to the Statement of Objections[865], Pilkington claims non-implementation, that its role in the arrangements was limited, and that its participation ended at an early stage.

Non implementation

[865] Se page 214 of Pilkington's response to the Statement of objections.

(697) Pilkington argues that there is no evidence of any implementation of the alleged arrangements by Pilkington. It submits that there is, on the contrary, positive evidence that Pilkington and the other competitors actually adopted competitive conduct on the market.

(698) Contrary to Pilkington's opinion, the Commission has shown that at least a certain degree of implementation took place (see recital (673)). In any event, it is not necessary for the Commission to show implementation of the agreements to prove the infringement once it appears that the object is to restrict, prevent or distort competition within the common market. According to case law, the Commission is not required to recognise non-implementation of a cartel as an attenuating circumstance, unless the undertaking relying on that circumstance is able to show that it clearly, openly, and substantially opposed the implementation of the cartel, and that it did not give the appearance of adhering to the agreement and, thereby, incite other undertakings to implement the cartel in question. This was not Pilkington's case. The fargument that an undertaking did not behave on the market in the manner agreed with its competitors, but on the contrary acted competitively, is not necessarily a matter which must be taken into account as a mitigating circumstance when determining the amount of the fine to be imposed[866].

Limited role

(699) Pilkington claims that the true centre of gravity of the "Club" discussions was between AGC and Saint-Gobain, Pilkington pointed as well at the limited number of its personnel involved in the contacts.

(700) The Commission notes, however, that Pilkington was present to a considerable extent at the meetings and/or contacts described in section 4.4 of this Decision and therefore participated in all aspects of the infringement. As to the reduced participation by Pilkington, the Commission notes that the company itself admits that it was present in 30 out of the 38 trilateral meetings chronicled in the Statement of Objections, namely in 80% of all trilateral meetings[867]. Furthermore, in the contacts it was represented by […]. The fact that the number of personnel involved was reduced depends rather on its internal organisation, not on the fact that Pilkington was less involved in the discussions. Therefore, this argument cannot be accepted either.

Early termination of the infringement

(701) Pilkington finally claims that it terminated the infringement at the latest on 3 September 2002, before the others and nearly two years and a half before the commencement of the Commission's investigation.

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866 See judgment of the Court of First Instance in Case T-44/2000 *Mannesmannröhren-Werke AG v Commission* [2004] ECR II-2223, paragraph 277; See also Case T-327/94 *SCA Holding v Commission* [1998] ECR II-1373, paragraph 142.

867 See page 205 of Pilkington's response to the Statement of Objections.

(702) This argument cannot be accepted either. As a general rule, there is no reason to apply a reduction in the fine for not having participated in the entire duration of the infringement, since this is taken into account when calculating the duration of the infringement. In addition, it has been shown in section 4.4 that Pilkington was involved in all important aspects of the cartel, namely the allocation and reallocation of contracts with a view to maintaining market stability.

10.4.2.4. Soliver

(703) In its written response to the Statement of Objections[868] Soliver claims that it had a very limited role in the cartel, which was led mainly by the Big three. It was coerced to enter into discussions and to adhere to the arrangements at the end of 2001 by the other three competitors. According to Soliver, the Big three heavy-handedly gave Soliver to understand that they could cut out Soliver if they so wished. The "*ex post* offensive" by the Big three for Soliver's contracts for the Audi A3, the Audi A6 and the VW Passat, and the sudden, drastic price rise for float glass which the Big three palmed off on Soliver as of 1 January 2002 placed Soliver in a precarious position. It is in this particular context that the contacts between Soliver and Saint-Gobain or AGC regarding supplies of car windows to manufacturers began to take place.

(704) The Commission notes that it takes into account in this Decision certain of these circumstances, by acknowledging that Soliver started its coordination with the other competitors only at a later stage. However, there is no direct evidence in the file that the conduct of the other participants vis-à-vis Soliver amounted to coercion. In any event, a company that is coerced by other participants to participate in a competition law infringement should inform public authorities.[869] As the Court of First Instance concluded, an undertaking cannot rely on the fact that it participated in an infringement under pressure from the other participants, in order to demand the application of an attenuating circumstance, as it "*could have complained to the competent authorities about the pressure brought to bear on it and have lodged a complaint with the Commission*"[870].

10.4.2.5. Effective co-operation outside the Leniency Notice

(705) […][871]. […].

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868 See point 17 of Soliver's response to the Statement of Objections.

869 See judgment of the Court of First Instance in Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon v Commission of the European Communities* [2004] ECR II-1181, paragraph 344; Case T-62/02 *Union Pigments v Commission* [2005], ECR II-5057, paragraph 63; Joined Cases C-189/02 P and others *Dansk Rørindustri v Commission* [2005], ECR I-5425, paragraph 369; Case T-9/99 *HFB Holding v Commission* [2002], ECR II-1487, paragraph 178; Case T-38/02 *Groupe Danone v Commission* [2005], ECR II-4407, paragraph 164 (confirmed by the judgment of the Court of Justice in Case C-3/06 P *Groupe Danone v Commission*, cited above); Joined Cases T-109/02 and others *Bolloré v Commission*, cited above, paragraph 639.

870 See judgment of the Court of First Instance of 20 March 2002 in Case T-23/99, *LR af 1998 A/S v Commission*, paragraph 142.

871 See page 77 of Asahi's and page 70 of Glaverbel's responses to the Statement of Objections.

(706) The Commission has assessed, in line with the case-law, whether the co-operation of the undertakings concerned enabled it to establish the infringement more easily. Indeed, an assessment of co-operation in a case where the Leniency Notice applies is in principle to be carried out under that Notice[872]. Only circumstances of exceptional nature could justify granting the undertakings concerned a reduction for effective co-operation falling outside the Leniency Notice (see *Raw Tobacco Italy*[873]).

(707) Taking into account the arguments of the parties, the Commission considers that no exceptional circumstances are present that would lead to a reduction of fines outside the reductions granted through the Leniency Notice.

10.4.3. Sufficient deterrence

(708) In determining the amount of the fine, the Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, it may increase the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates (point 30 of the 2006 Guidelines on Fines) , as the fine imposed must fulfil its objective of disciplining the infringing undertaking having taken into account its overall size.

(709) The Commission considers that in this particular case no specific increase for deterrence is warranted.

10.5. Application of the 10% Turnover limit

(710) Article 23(2) of Regulation (EC) No 1/2003 stipulates that for each undertaking participating in the infringement, the fine shall not exceed 10% of the undertaking's total turnover in the preceding business year.

(711) In this case, the ceiling of 10% of turnover is attained in respect of the fine to be imposed on Soliver.

(712) The amounts of the fine to be imposed on each undertaking before application of the Leniency Notice are therefore the following:

All amounts are in EUR

- Saint-Gobain [...]

- Pilkington [...]

- AGC [...]

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872 See judgment of the Court of First Instance of 15 March 2006 in Case T-15/02 *BASF AG v Commission* [2006] ECR II-497, at paragraph 586. See also judgment of the Court of First Instance of 6 December 2005 in Case T-48/02 *Brouwerij Haacht v Commission* [2005] ECR II-5265, at paragraph 104 and the case law cited therein.

873 See Commission Decision C(2005)4012 of 20.10.2005 in Case COMP/38.281, *Italian Raw Tobacco*, (OJ L 353, 13.12.2006, p. 45), paragraphs 385 and following.

- Soliver [...]

10.6. Application of the Leniency Notice

(713) As indicated in Chapter 3 this *ex-officio* investigation was initiated further to information brought to the attention of the Commission by an informant. Following the first inspection, the leniency applicant (see recital (56)) submitted an application for immunity under point 8 of the Leniency Notice and, in the alternative, for a reduction of fines.

10.6.1. Immunity under point 8 of the Leniency Notice

10.6.1.1. *Immunity under 8(a)*

(714) The leniency applicant claims that it would be entitled to immunity under point 8(a) of the Leniency Notice, as the first *ex officio* inspection carried out by the Commission on 22/23 February 2005 did not result in any material evidence confirming the suspected infringement. The leniency applicant claims to fulfil the qualifying criteria for immunity under point 8(a) for several reasons. Firstly, it was the first to submit evidence enabling the Commission to carry out an on-site inspection. In particular, according to the leniency applicant, the explanations and information provided between the first and second inspections enabled the Commission to adopt a second inspection decision. Furthermore, the Leniency Notice's object and purpose would not be fulfilled if point 8(a) was unavailable in the event that a previous *ex officio* inspection did not result in incriminating evidence regarding at least a substantial part of the illegal conduct.[874]

(715) The arguments of the applicant are in the Commission's view unfounded. As follows from point 9 of the Leniency Notice, immunity from fines under point 8(a) is no longer available when the Commission had, at the time of the applicant's submission and contrary to what the applicant claims, already sufficient information in its possession to adopt a decision to carry out an investigation in connection with the alleged cartel. The leniency applicant did not question that the adoption of the first inspection decision was justified and legally correct nor did it argue that the Commission's investigation concerns a different cartel than the one in respect of which the first inspection was carried out. The Commission therefore confirms its conclusion that, at the time the leniency applicant first made its application under the Leniency Notice, immunity under point 8(a) was no longer available.

10.6.1.2. *Immunity under 8(b)*

(716) The leniency applicant moreover contends that the Commission did not have, at the time of the application, sufficient evidence to find an infringement of Article 81 of the Treaty and that it was the first and only undertaking to provide evidence that enabled the Commission to find such an infringement, therefore entitling it to be granted immunity from fines

874 See […].

pursuant to point 8(b) of the Leniency Notice.[875] The Commission allegedly did not copy evidence during the first inspection which was capable of demonstrating to the requisite legal standard an infringement of Article 81 of the Treaty, as Glaverbel and Asahi's contribution was necessary to supplement that evidence in order to find an infringement. The leniency applicant also argues that the documents in the Commission's possession would have been of no use to the Commission because they either do not relate to an infringement at all or are ambiguous as to whether an infringement in fact took place. Glaverbel and Asahi are also of the view that the assessment whether they should be granted immunity under point 8(b) of the Leniency Notice is an assessment which has to be made at the time of their application in accordance with point 15 of the Leniency Notice and that their submissions throughout the procedure, considering the absence of any other leniency application, must be taken into account to assess Asahi's and Glaverbel's overall contribution to the Commission's ability to find an infringement.[876]

(717) The Commission cannot accept the leniency applicant's arguments. Points 8(b) and 10 of the Leniency Notice specify that immunity from fines will only be granted on the cumulative conditions that the Commission did not have, at the time of the application, sufficient evidence to find an infringement of Article 81 of the Treaty in connection with the alleged cartel and that the evidence submitted may, in the Commission's view, enable it to make such a finding. Whether the leniency applicant satisfies the latter standard depends on the value of the evidence it submits to the Commission. Evidence which merely strengthens the Commission's ability to prove the facts by complementing evidence already in the Commission's possession at the time of the application would not satisfy the condition of point 8(b), as it would be tantamount to providing significant added value under points 21 and 22 of the Leniency Notice with respect to that evidence.

(718) There can be no doubt that, at the time of the leniency application, the Commission already had in its possession contemporaneous evidence copied during the first inspection which enabled the Commission to find an infringement of Article 81 of the Treaty. This consisted of contemporaneous handwritten notes of trilateral and bilateral meetings and/or contacts between competitors, including evidence of monitoring as well as correcting measures between the cartel participants across all major vehicle accounts (see sections 4.3 and 4.4).[877] Immunity under point 8(b) was therefore at the time of the application no longer available for the infringement referred to in this Decision. The information provided by the leniency applicant completed the information already in the Commission's possession, insofar as it reinforced its ability to prove certain facts relating to the infringement.

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875 See […] Glaverbel's response to the Statement of Objections, p. 8 to 30 and Asahi's response to the Statement of Objections, p. 30 to 33.

876 See Glaverbel's response to the Statement of Objections, p. 28.

877 See documents provided by the informant as well as documents copied during the first inspection labelled CC4, PDR12, EF13, CC1, JL5, KE55, SM23, SM25, DV15, EF7, PDR11, KE18, PJ1 and JLO2.

(719) In the light of the foregoing, as stated in recital (58), the Commission rejected the leniency applicant's application for immunity under point 8 of the Leniency Notice on 19 July 2006, and confirms its decision.

10.6.2. Significant Added Value

(720) The leniency applicant submitted an application for immunity from fines or alternatively for reduction of fines on 24 February 2005, the day after the Commission's first inspection.

(721) The Commission considers that the leniency applicant provided evidence which strengthened its ability to prove the facts for the whole infringement period. The leniency applicant provided several explanations that were useful for the Commission to further understand the documents collected during the inspection in their correct context. […] the leniency applicant provided explanations on how and where the cartel members met and communicated with each other, how the cartel operated, including in particular the functioning of a market share stability mechanism and of a compensation system put in place. It also submitted documentary evidence in the form of contemporaneous handwritten notes by the employees of the leniency applicant.

(722) […]. It has provided the Commission with full and effective cooperation from the day after the inspection and throughout the proceeding. The Commission therefore considers that Glaverbel and Asahi have met the requirements of point 21 of the Leniency Notice. Furthermore, as Asahi and Glaverbel were the first and only undertakings to have fulfilled the requirements of point 21 of the Leniency Notice, the Commission informed those companies by letter of 30 March 2007[878] of its intention to grant them a 30-50% reduction of the fine that would normally be imposed.

(723) Considering the value of their contribution to this case, the very early stage at which they provided this contribution and the extent of their cooperation following their submissions, Glaverbel and Asahi are entitled to a reduction of 50% of the fine that would otherwise have been imposed on them.

10.6.3. Application of point 23(b) of the Leniency Notice

(724) In the responses to the Statement of Objections, the leniency applicant claims that it should be granted partial immunity under point 23 of the Leniency Notice for the periods from […]. Glaverbel claims that without its contribution the Commission would not have been in a position to prove the existence of the infringement […]. In particular the Commission would only have been able to establish a very limited number of anti-competitive contacts in relation to only the period between […].[879] The documents in the Commission's possession following the first inspection did, according to Glaverbel, not constitute sufficient evidence of anti-competitive contacts

878 See p. 50136 to 50140 (Decisions) and p. 50141 bis (notification).

879 See Glaverbel's response to the Statement of Objections, p. 30 to 34 and Asahi's response to the Statement of objections, p. 50.

[…].[880] It was the leniency applicant's contribution that enabled the Commission to prove the infringement beyond that period which therefore had a direct bearing on the duration of the infringement or, at the very least, the applicant's involvement in the infringement during that period. Moreover, the leniency applicant claims that, without its help, the Commission would not have been able to establish the infringement and/or its involvement in the infringement […].[881]

(725) According to point 23, third paragraph, of the Leniency Notice, if an undertaking provides evidence "relating to facts previously unknown to the Commission which have a direct bearing on the gravity or the duration of the suspected cartel", the Commission will not take these elements into account when setting the fine to be imposed on that undertaking. It follows clearly from its wording that point 23, third paragraph, requires a fact "unknown to the Commission" and not simply the fact that evidence may critically reinforce the ability to prove certain facts with regard to which the Commission already has evidence on the file. Moreover, in order to benefit from point 23, third paragraph, the evidence provided by the applicant must have a direct bearing on the duration or the gravity of the suspected cartel as such and not merely the applicant's involvement in the cartel. It is not enough to provide evidence regarding certain details which may reinforce the ability to prove the cartel (such as additional meetings or contacts), but which have no bearing on the overall gravity or duration of the cartel.

(726) At the time of the leniency application, the Commission had evidence copied during the first inspection of cartel contacts […] from 10 March 1998 (starting date of the infringement, see recital (125)) and […], indicating that all of the addressees of this Decision had entered into illicit arrangements concerning the supply of automotive glass to vehicle manufacturers.[882] The leniency applicant did not provide any evidence that would have allowed the Commission to extend the duration or the scope of the cartel beyond what was already known to it at the time the application was made. The fact that the leniency applicant's information further corroborated and complemented the information already in the Commission's possession and, therefore, to some extent allowed the Commission to prove the facts in question is a matter that has been assessed (and rewarded) as evidence bringing significant added value within the meaning of point 21 of the Leniency Notice.

(727) In the light of the above, the Commission considers that point 23, third paragraph, of the Leniency Notice is not applicable to the leniency applicant.

10.6.4. Conclusion on the application of the Leniency Notice

(728) In conclusion, the leniency applicant will be granted a 50% reduction of the fines that would otherwise have been imposed. It will, however, for the

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880 See Glaverbel's response to the Statement of Objections, p. 32 and 33.

881 See Glaverbel's response to the Statement of Objections, p. 36 to 52.

882 See documents labelled KE18, p. 831, PJ1, p. 1572 and JLO2, p. 3482.

reasons stated in section 10.6.3, not be granted a reduction pursuant to point 23, third paragraph, of the Leniency Notice.

11. […]

(729) […].

(730) […].

12. FINAL AMOUNTS OF THE FINES TO BE IMPOSED IN THIS PROCEEDING

(731) The amounts to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 should therefore be as follows:

(a) Saint-Gobain: 896 000 000 EUR

(b) Pilkington: 370 000 000 EUR

(c) AGC: 113 500 000 EUR

(d) Soliver: 4 396 000 EUR

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 81 of the Treaty establishing the European Communities and Article 53 of the EEA Agreement by participating, for the periods indicated, in a complex of agreements and/or concerted practices in the automotive glass sector in the EEA:

(a) Asahi Glass Company Limited, AGC Flat Glass Europe SA/NV, AGC Automotive Europe SA, Glaverbel France SA, Glaverbel Italy S.r.l., Splintex France Sarl, Splintex UK Limited and AGC Automotive Germany GmbH, from 18 May 1998 to 11 March 2003;

(b) La Compagnie de Saint-Gobain SA, Saint-Gobain Glass France SA, Saint-Gobain Sekurit Deutschland GmbH & Co. KG and Saint-Gobain Sekurit France SA, from 10 March 1998 to 11 March 2003;

(c) Pilkington Group Limited, Pilkington Automotive Ltd, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Italia Spa, from 10 March 1998 to 3 September 2002;

(d) Soliver NV, from 19 November 2001 to 11 March 2003.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

(a) Asahi Glass Company Limited, AGC Flat Glass Europe SA/NV, AGC Automotive Europe SA, Glaverbel France SA, Glaverbel Italy S.r.l., Splintex France Sarl, Splintex UK Limited and AGC Automotive Germany GmbH, jointly and severally: EUR 113 500 000;

(b) La Compagnie de Saint-Gobain SA, Saint-Gobain Glass France SA, Saint-Gobain Sekurit Deutschland GmbH & Co. KG and Saint-Gobain Sekurit France SA, jointly and severally: EUR 896 000 000;

(c) Pilkington Group Limited, Pilkington Automotive Ltd, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Italia Spa, jointly and severally: EUR 370 000 000;

(d) Soliver NV: EUR 4 396 000.

The fines shall be paid in Euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

SOCIETE GENERALE
Cours Valmy 17, F-92800 PUTEAUX
IBAN Code: FR76 30003 06990 00101611532 82
SWIFT Code: SOGEFRPPXXX

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points..

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article, insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to:

Asahi Glass Co. Ltd

1-12-1, Yurakucho,
Chiyoda-ku,
Tokyo 100-8405
JAPAN

AGC Flat Glass Europe SA/NV

Chaussée de la Hulpe / Terhulpsesteenweg 166
B-1170 Brussels
BELGIUM

AGC Automotive Europe SA

Parc Industriel Zone C
B-7180 Seneffe
BELGIUM

Glaverbel France SA

114 Bureaux de la Colline
92213 Saint-Cloud Cedex
FRANCE

Glaverbel Italy S.r.l.

Via Genova, 31
12100 CUNEO (CN)
ITALY

Splintex France Sarl

Tour Pascal A
6 Place des Degres - La Defense
92045 Paris

FRANCE

Splintex UK Limited

Chestnut field
Regent Place - Rugby
Warwickshire CV21 2XH
UNITED KINGDOM

AGC Automotive Germany GmbH

Friedrich-List-Allee 40
41844 Wegberg
GERMANY

La Compagnie de Saint-Gobain SA

18, Avenue d'Alsace
Les Miroirs La Défense 3
F-92400 Courbevoie
FRANCE

Saint-Gobain Glass France SA

18, Avenue d'Alsace
Les Miroirs La Défense 3
F-92400 Courbevoie
FRANCE

Saint-Gobain Sekurit Deutschland GmbH & Co. KG

Viktoriaallee 3-5
52066 Aachen
GERMANY

Saint-Gobain Sekurit France SA

Rue du Marechal Joffre
60150 Thourotte
FRANCE

Pilkington Group Limited

Prescot Road
St Helens, Merseyside WA10 3TT
UNITED KINGDOM

Pilkington Automotive Ltd

Prescot Road
St Helens, Merseyside WA10 3TT
UNITED KINGDOM

Pilkington Automotive Deutschland GmbH
Haydnstraße 19
45884 Gelsenkirchen
GERMANY

Pilkington Holding GmbH
Haydnstraße 19
45884 Gelsenkirchen
GERMANY

Pilkington Italia Spa

Zona Industrale San Salvo
66050 San Salvo (CH)
ITALY

Soliver NV

Groene-Herderstraat, 18
8800 Roeselare (Rumbeke)
BELGIUM

This Decision shall be enforceable pursuant to Article 256 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 12 November 2008

For the Commission
Neelie KROES
Member of the Commission