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Largest ever European fine for cartel violations

€992 MILLION FINE IMPOSED BY THE EUROPEAN COMMISSION ON LIFT AND ESCALATOR MANUFACTURERS

The European Commission (the Commission) recently imposed fines totalling €992 million (about £679 million) on lift and escalator manufacturers for their involvement in a cartel. Announced by the Commission on 21 February 2007, the fines are the largest ever for European cartel violations.

Under Article 81 of the EC Treaty, agreements between competitors, such as cartels, are prohibited. The Commission has the power to investigate and fine participants of a cartel, and companies that have been involved in other such anti-competitive activities. The Commission has often claimed that it sees cartels as the most harmful and most serious breaches of competition law.

The lift manufacturers involved in the cartel included: Otis; Kone; Schindler; and ThyssenKrupp groups for anti competitive activities in: Belgium; Germany; Luxembourg and the Netherlands. In addition, Mitsubishi was found to have participated in the Dutch cartel.

Following the receipt of information, the Commission performed a number of dawn raids across Europe at the sites of a number of lift and escalator manufacturers in January 2004. A number of those manufacturers applied for leniency in accordance with the Commission's 2002 Leniency Notice. This can provide immunity and/or reductions in fines in return for evidence of a cartel. Certain Kone and Otis subsidiaries benefited from this leniency, having responded to the Commission in the required time frame and complied with the other strict leniency requirements.

Conversely, the fine imposed on ThyssenKrupp included a 50 per cent increase due to its previous involvement in cartel activity. These additional penalties on repeat offenders (also referred to as recidivists) are in line with the enhanced anti-trust sanctions introduced by the Commission in June 2006. ThyssenKrupp's total fine amounted to over €479 million, being the largest fine imposed on a single company for involvement in a cartel. (The fine of €497 imposed on Microsoft remains the largest fine imposed on a single company, but related to an abuse of a dominant position, rather than a cartel).

The huge fines represent the far-reaching effects of the cartel, which consisted of: bid rigging; allocating the market between participants; and fixing prices. As the products involved in the cartel consisted of the initial installation as well as long-term maintenance contracts, the impact of the cartel will be felt for a long period of time, until the maintenance contracts end or the products are replaced. A number of the victims of the cartel included public buildings such as hospitals, railway stations and even the Commission buildings themselves.



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The Commission recently fined manufacturers of synthetic rubber €519 million for operating a price fixing cartel. Similarly, in the UK, a number of construction contractors have been fined for bid rigging cartels.

In the US, the UK and a number of other countries, involvement in a cartel is criminal and can result in imprisonment. The US has been known to seek the extradition of individuals who have been involved in cartels operating on the US market.

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If you would like any further information on the above issues, you are welcome to contact any of us, or your usual contact at Nabarro.

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