

#### **IV/31. 906, flat glass**

The product to which this Decision relates is flat glass in all its varieties. There are three types of flat glass produced using different manufacturing processes:

- drawn glass, which takes the form of a colourless, transparent sheet, used for the manufacture of window panes,
- cast glass, which takes the form of an uneven, translucent but not transparent sheet, obtained by rolling,
- plate glass, in the form of a transparent sheet whose surfaces are almost perfectly parallel, which may be obtained by continuous casting or by the float-glass process. The float-glass process is the one most widely used in producing glass.

(3) Float glass began to be produced on an industrial scale in the early 1960s; because of its characteristics and its relatively low production costs in relation to its quality, it rapidly replaced the other types of glass. At present, more than 90 % of flat glass is manufactured using the float-glass process.

(4) Flat glass may be used unprocessed (for example, window panes) or processed (for example, automotive glass, building glass and mirror manufacturing); between 70 % and 80 % of glass produced is processed, either directly by the producers or by specialists. Flat glass intended for the motor vehicle industry, which is exclusively processed glass, is treated only by the glass producers, whereas flat glass intended for building and furnishing is processed either by the glass producers, if they are vertically integrated, or by independent processors.

(5) Within the industry, two markets may be distinguished: the automotive, or more generally the transport, market and the non-automotive or building market. The first market comprises essentially glass for use in the motor vehicle industry and, to a lesser extent involving small quantities, glass intended for the railways, ships and travelling cranes. The second market comprises glazing for use in building, furniture glass, mirrors, glass for use in household electrical goods, etc.

The automotive market is supplied directly by the glass producers; the non-automotive market is supplied to a lesser extent by the glass producers and more usually through wholesalers, processing wholesalers and processors.

The customer of non-automotive flat-glass producers are wholesalers and processors. Some 40 % of demand is accounted for by processors purchasing directly from producers, while the remaining 60 % is accounted for by wholesalers. Wholesalers themselves process at

least half of the glass they purchase, with the bulk of the remainder being sold directly to final consumers and a smaller proportion to small processors.

Processing consists in the manufacture of safety glass, insulating glasses, mirrors, etc. Processors are often in competition with flat-glass producers who process glass themselves. Sometimes, processors are dependent on the transfer of technology from glass producers and thus manufacture processed products under licence granted by their suppliers.

The customers of automotive-glass producers are the car manufacturers. Before being sold to the motor vehicle manufacturers, the glass is processed by the glass producers or by their subsidiaries in the light of the designs and technical specifications required by the motor vehicle manufacturers.

During the period under examination, an average of 79 % of Italian demand for non-automotive glass and an average of 95 % of Italian demand for automotive glass were met by the three Italian producers:

Fabbrica Pisana SpA (FP) is a subsidiary of the Saint-Gobain Group, which is one of the largest industrial groups in the world. Saint-Gobain owns the following companies involved in the glass industry: Luigi Fontana SpA, Balzaretto e Modigliani SpA, Home Glas SpA, Saint-Gobain Italiana Auto srl, Toscana Glas SpA and Flovetto SpA. Luigi Fontana SpA is the largest processing wholesaler on the Italian market. Through the intermediary of Toscana Glas, FP owns a float-glass plant at Pisa and a float-glass plant shared with SIV and operated by Flovetto at San Salvo and has remained the only producer of cast glass in Italy. Società Italiana Vetro SpA (SIV) is a company controlled by the State holding company EFIM. It owns a float-glass plant at San Salvo and a float-glass plant shared with FP and operated by Flovetto at San Salvo. SIV owns the following companies operating in the glass industry: Vetro Europa SpA in Italy and SIVESA in Spain, which produce automotive glass; Società Vetri Speciali at San Salvo, which produces reflective glasses; and the glass marketing companies SIV-Deutschland in Frankfurt and SIV-France in Paris. Vernante Pennitalia SpA is a subsidiary of the American group PPG-Industries Inc., Pittsburgh. It owns a float-glass plant at Cuneo and another at Salerno and controls the company Pennitalia Securglass, which produces automotive glass. In 1982, PPG-Industries Inc. bought Boussois from BSN.

## THE DESCRIPTION OF CONDUCT

The three Italian producers communicated identical price lists to their Italian customers on dates which were close to one another and in some cases on the same days. The initiative in

altering the price lists was not always taken by the same producer, but sometimes by one and sometimes by another of the three producers.

Identical discounts on the listed prices were granted in accordance with the categories or levels in which customers were classified. Whereas prices were communicated to all customers without distinction, the classification of customers by category or level and the list of discounts were not divulged.

The main customers, i.e. those which account for more than half of demand, were classified in the same category or level, whenever they obtained their supplies from any of the producers. There are two exceptions amongst the first 20 customers and a number of exceptions amongst the smaller customers classified in lists A and B. The exceptions are due to the fact that some producers, such as VP, aim to give preferential treatment to processors or to the fact that each producer tries to give preferential treatment to certain customers in certain regions, as may be seen from a handwritten note on a meeting between SIV and FP on 30 January 1985. The classification of customers by category or level was not dependent on their purchases from a given producer, but on each customer's total purchases from all producers. If each firm asserts that it has its own internal and secret criteria for classifying customers, customers cannot be the means of circulating information from one producer to another, since customers cannot know the criteria, but only the discounts granted to them. It is therefore not probable that each customer will pass on internal, secret information to each producer in order to allow the other producers to adapt their customer lists within a brief or relatively brief period of time.

The uniformity of prices and of discount scales and the uniform classification of the main customers by category or level are the result of concerted practices between the producers agreed on directly during talks, meetings or contacts or through the intermediary of the spokesman of the main customers.

The company documents discussed below indicate that SIV and FP agreed on prices and the allocation of quotas at least as from 1982. VP also participated in these restrictive practices from 1983 at least, albeit less strictly than the other two producers. By handwritten note dated 26 October 1982, FP forwarded to SIV an internal memo of the same date indicating the average percentage increases in prices obtained from Fiat from 1978 to 1982 and forecasts of average increases under the 1983 and 1984 contract signed between Fiat and FP on 14 June 1982. SIV's internal memo dated 11 November 1982 shows that the average percentage increases obtained by SIV are the same as those obtained by FP. As regards SIV's quotas for

1983, the memo emphasizes that their calculation did not take account of the possible subsequent 2 % quota indirectly granted in Paris to SIV for 1983 and 1984, that a strict monitoring of actual quotas was necessary for original equipment, and that following the agreements entered into there was gradual alignment with the competition in respect of small batches. At the beginning of 1985, discussions began on how to get price increases accepted by the Fiat group. SIV's handwritten note on the meeting held in Rome on 30 January 1985 between SIV and FP contains the following statement: 'Fiat problem - increase in holes and brackets as Trojan horse in Fiat for increase in prices'. The problems concerning FIAT are also mentioned in point 3 of FP's handwritten note on the same meeting. Other uniform percentage increases in prices were introduced on the following dates: on 15 December 1985 by SIV and VP and 20 December 1985 by FP; on 1 May 1986 by FP, 15 May 1986 by SIV and 1 September 1986 by VP; on 1 December 1986 by SIV and FP.

The product concerned by this case is sugar. Sugar is produced from sugar beet or cane. With the exception of part of the south of Spain and the French DOM, sugar cane is mainly grown in tropical and subtropical areas outside the Community. The ACP countries have the right to export to the Community a certain quota of cane sugar, free of import levy.

Irish Sugar is the main supplier of sugar in Ireland, with an overall market share of above 90 % in the period 1985 to 1995. Imports of sugar into Ireland have come from France, the United Kingdom (mainly Northern Ireland) and to a limited extent from Germany and Belgium.

On the retail sugar market, which accounts for around 25 % of the total sugar market, Irish Sugar's share has been above 85 % since 1985, and its main 'Siucra` brand enjoys significant consumer recognition (13). Most of its competition comes from small domestic companies. Depending on relative price differentials, there have at times been imports of retail sugar from Northern Ireland, although a significant proportion of such imports are manufactured by Irish Sugar. Irish Sugar internal documents note that its customers for retail sugar have traditionally been split 50/50 between wholesalers and retail groups ('multiples`), but that recently multiples have been growing in importance. A few of these multiples sell own-brand retail sugar. However 'to-date, all sugar for own brands is sourced from Irish Sugar as the Irish source is seen as important to the customer`.

During the 1980s Irish Sugar's main domestic competitors for retail sugar were Round Tower Foods Ltd ('Round Tower`), and ASI, which imported the 'Eurolux` brand of Compagnie française de sucrerie ('CFS`) until late 1988. In the period 1984/85 up to 1986/87 the majority of Round Tower's sugar supplies consisted of imported sugar. During that period it was active as a parallel importer of Irish Sugar sugar from Northern Ireland into Ireland. It also imported sugar direct from certain destinations and purchased from ASI sugar imported from France. Since 1987/88 it has bought most of its sugar from Irish Sugar.

Distribution of Irish Sugar sugar in Ireland is carried out by Sugar Distributors Limited (hereinafter referred to as 'SDL`). Until February 1990, Irish Sugar held 51 % of the equity (in the form of 'B shares`) of SDL's parent company, Sugar Distributors (Holdings) Ltd ('SDH`). The remaining 49 % (in the form of 'A shares`) was held until 1988 by the companies Musgraves and Punch, and Messrs Garavan and Keleghan, and from 1988 on by four executives of SDH, namely Messrs Lyons, Keleghan, Tully and Garavan. At that time there

was an equal number of directors for the A and B shareholders and an independent chairman. The managing director of Irish Sugar and a number of other Irish Sugar directors were on the boards of SDH and SDL. Another company, J. C. Cole Ltd ('JCC'), was responsible for distribution of sugar in the western district of Ireland until it was wound up in March 1988 and its business integrated in SDL. In February 1990 Irish Sugar acquired all of the remaining shares in SDH, and thus became the sole owner of SDL.

#### PRODUCT SWAP

It has been shown above that traditionally ASI's retail sales of white sugar were made through Round Tower (27). However, from 1987/88 onwards Round Tower was receiving nearly all of its sugar from SDL. As the existing business of ASI came under severe pressure in the industrial sector, ASI decided in 1988 to launch a 1 kg sugar packet of CFS under the brand name 'Eurolux' on the market in Ireland.

At the board meeting of SDH of 28 June 1988 this issue was discussed and the minutes record that: '. . . With regard to the retail market, Mr Keleghan advised the board that as he had forecast at the March meeting, ASI did launch a retail pack on the market. While they had so far been unsuccessful in their launch, it was his belief that they would succeed in getting some small quantities of sugar into some independent retail shops . . .

Mr Comerford (Managing Director of Irish Sugar) stated that the sugar industry has never before faced a challenge such as we were now facing. If we did not succeed in meeting this challenge, then the future of the sugar industry in Ireland would be very bleak indeed. He was quite pleased with the response so far to the challenge but was concerned about the cost to both (Irish Sugar) and (SDL) which would be very high.

ASI concluded a deal with the Irish wholesale group Allied Distribution Merchants ('ADM') for the supply of 1 kilogram packs of granulated sugar in or about February 1988. ADM agreed to purchase 1 500 tonnes of 1 kg packs of Eurolux sugar and the first consignment of 24 tonnes thereof was delivered in mid-April to the ADM warehouse for distribution to retail outlets of the Londis chain of stores. ADM issued on 15 April 1988 a bulletin to all its members, that is to say the retail outlets of the Londis chain, advising them of the availability of the sugar. It follows from the evidence on the file that the 21 tonnes of Eurolux sugar in question were collected from ADM on 22 April 1988. Similar actions took place with regard to the retailer Kelly's Spar Supermarket. According to Mr Brennan's affidavit, Kelly had bought half a tonne of Eurolux sugar from the agent of ASI around mid-May 1988. The Eurolux sugar was placed on the shelf and at first the sugar sold well. It is further reported in the affidavit of Mr Brennan

that some four weeks later, SDL called the shop and asked how Eurolux was selling. The affidavit states that Mr Kelly informed SDL that if he could get a better price for sugar from Irish Sugar he would not want to sell the Eurolux sugar. Mr Kelly stated that the man representing the defendant (SDL) informed him that: 'if he wasn't able to shift it they would swap it for him`.

In his replying affidavit Mr Keleghan of SDL said, in essence, that both ADM and Kelly were concerned as to whether they would be able to sell all of the Eurolux sugar which they had been delivered. Both ADM and Kelly would have been aware that the Irish market was not ready for Eurolux sugar. In the case of Kelly, SDL noted that Mr Kelly himself had asked to arrange to swap Eurolux sugar for the Siucra brand.

(52) It follows from the documentary evidence of the file that although the actions relating to the product swap were taken by SDL, Irish Sugar was duly informed by ASI of the difficulties it encountered. In a letter of 18 July 1988 Mr Loane of ASI wrote the following to Mr Comerford, the chief executive of Irish Sugar, to Irish Sugar's address in Dublin.

'Dear Mr Comerford. I am writing to bring to your attention unfair trade practices being initiated either directly by your company or by Sugar Distributors Limited which is controlled by you in relation to our efforts to market our Eurolux 1 kg retail sugar in Ireland. We have requested the Director of Consumer Affairs and Fair Trading to investigate specific difficulties we are experiencing. Specifically this letter is to advise you that we object very strongly to your company's substitution of our product at the Spar retailer, Kelly's of Boyle. With or without the agreement of the proprietor this action contravenes existing legislation and we respectfully demand that you restore our product here and in other instances where this practice has occurred. We specifically object to the use of oppressive tactics on other individual retailers who are enjoying the benefits of Eurolux and would continue to so do if left unthreatened.

#### IMPORT FROM NORTHERN IRELAND

In the period between 1985 and 1990, and in particular during a price war between the UK sugar producers British Sugar plc and Tate & Lyle plc, Irish Sugar was faced with the problem of cross-border imports from Northern Ireland to Ireland. In principle all sugars in Northern Ireland, regardless of their origin, could be used for these imports. They included both sugars from competing producers such as British Sugar's Silver Spoon and Irish Sugar's own sugar which was being reimported either in bulk or in retail packets (under the McKinney label). At several meetings this matter was discussed, leading to various specific actions which

were designed as a defence against these imports.

Mr A. J. Hogan [general manager marketing of Irish Sugar] suggested we remove [. . .]/tonne rebates currently given in Northern Ireland. This would have a double benefit in increased Northern Ireland prices plus reducing rebate required in south. This action to be taken while attempting to get B. S. C. [British Sugar] and Tate & Lyle to follow but our price to be increased in any case. Mr Keleghan's [sales director of SDL] view was that there were only two alternatives. (a) National rebates in the south. He suggested [. . .]/tonne on a national basis with [. . .] in border areas for February/March. Estimated cost £[. . .]. (b) Remove present [. . .] border area rebate as this was impossible to maintain on a selective basis and restrict supplies of McKinney sugar to the Northern Ireland wholesalers who are currently supplying the southern trader. After discussion it was decided to implement the latter alternative. In the meantime efforts are to be continued to get B. S. C. and Tate & Lyle to increase prices`.

'Since the last packet sugar price increase in October 1984 (. . .) a substantial differential has existed between home market prices and the price of competitive imported product, the latter including reimported McKinney packets and bagged sugar. (. . .) The activities of Round Tower Foods Limited which is currently packing and selling an estimated 40 tonnes of packet sugar per week (. . .) are a continuing cause of concern and, at this stage, are but one feature of the actual/potential competition picture which threatens the price and market share dominance of "Siucra" packet sugars in the Irish market`. In the same note some strategic options were set out: '(i) take no action; (ii) reduce market selling prices to all customers by £ Irl [. . .] per tonne, thereby equalizing the selling prices north and south. This action should totally eliminate all import/competitive problems but would be both unnecessary and impossible from a financial point of view; (iii) reduce selling prices by [. . .], which should be sufficient to confine cross-border imports to border areas and keep the level of packing by Round Tower Foods Limited to at, or below the current level, but would not deal with the demands of multiples etc., for equal pricing north and south; (iv) operate a selective co-ordinated programme to take account of the most vulnerable areas, with the objective of maintaining shelf prices at the current level. This is the recommended strategy and SDL believes that, given the excellent relationships which exist in the market place coupled with the recognized branding advantage of Siucra products, it should be adopted for the balance of 1985/86 and for 1986/87. SDL consider that this is the most preferable least-cost option, while at the same time recognizing that it cannot be guaranteed to withstand increased pressures from Round Tower Foods Limited/importers. If the latter situation occurs serious consideration will have to be given to the more expensive options listed`