

Brussels, 21st February 2007

Competition: Commission fines members of lifts and escalators cartels over €990 million

The European Commission has fined the Otis, KONE, Schindler and ThyssenKrupp groups €992 million for operating cartels for the installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands, in clear violation of EC Treaty rules that outlaw restrictive business practices (Article 81). The decision names 17 subsidiaries of the above groups, together with Mitsubishi Elevator Europe B.V. which participated in the Dutch cartel. Lifts and escalators play a major role in modern urban life - Otis alone estimates that the equivalent of the entire world's population travel on their lifts, escalators and moving walkways every 9 days. Between at least 1995 and 2004, these companies rigged bids for procurement contracts, fixed prices and allocated projects to each other, shared markets and exchanged commercially important and confidential information. The effects of this cartel may continue for twenty to fifty years as maintenance is often done by the companies that installed the equipment in the first place; by cartelising the installation, the companies distorted the markets for years to come. KONE subsidiaries received full immunity from fines under the Commission's leniency programme in respect of the cartels in Belgium and Luxembourg, as they were first to provide information about these cartels. Similarly, Otis Netherlands received full immunity in respect of the Netherlands cartel. The fines imposed on the ThyssenKrupp companies were increased by 50%, as it is a repeat offender. These are the largest ever fines imposed by the Commission for cartel violations.

Competition Commissioner Neelie Kroes said: "It is outrageous that the construction and maintenance costs of buildings, including hospitals, have been artificially bloated by these cartels. The national management of these companies knew what they were doing was wrong, but they tried to conceal their action and went ahead anyway. The damage caused by this cartel will last for many years because it covered not only the initial supply but also the subsequent maintenance of lifts and escalators - for these companies the memory of this fine should last just as long."

The Commission's started the investigation on its own initiative using information brought to its attention. This led to surprise inspections in January 2004 at the premises of lift and escalator manufacturers throughout Europe. In turn, these inspections triggered many applications from the companies for immunity or reduction of fines under the Commission's 2002 Leniency Notice (see [IP/02/247](#) and [MEMO/02/23](#)).

The cartels

The evidence uncovered in the inspections showed that the companies ran illegal cartels in Belgium, Germany, Luxembourg and The Netherlands. This was further confirmed by numerous documents and corporate statements provided by the leniency applicants.

The companies allocated tenders and other contracts for the sale, installation, maintenance and modernisation of lifts and escalators with the aim of freezing market shares and fixing prices. Business secrets and confidential information on bidding patterns and prices between the cartel participants were also exchanged. Projects that were rigged included lifts and escalators for hospitals, railway stations, shopping centres and commercial buildings.

The allocation of projects was similar in all four Member States. The companies informed each other of calls for tender and co-ordinated their bids according to their pre-agreed cartel quotas. Fake bids, too high to be accepted, were lodged by the companies who were not supposed to win the tender, in order to give the impression of genuine competition. The companies kept and circulated amongst themselves updated project lists for Belgium, Germany and Luxembourg. In Germany and The Netherlands, it was often agreed that the company that had a longstanding or good relationship with a particular customer should secure most of that customer's contracts; referred to by the companies as the "existing customers remain" principle.

In all four cartels high-ranking national management (such as managing directors, sales and services directors and heads of customer service departments) participated in regular meetings and discussions. There is evidence that the companies were aware that their behaviour was illegal and they took care to avoid detection; they usually met in bars and restaurants, they travelled to the countryside or even abroad, and they used pre-paid mobile phone cards to avoid tracking.

In their responses to the Commission's Statement of Objections, the companies did not contest the facts found by the Commission, and none of them requested an oral hearing.

Fines

These practices are a very serious infringement of EC Treaty anti-trust rules. The fines take account of the size of the markets for the products, the duration of the cartels and the size of the firms involved. The fines calculated for the relevant ThyssenKrupp companies were increased by 50% each, as it is a repeat offender.

It is the Commission's practice to address its decisions to all the legal entities responsible for the illegal behaviour. In line with established case law, if the parent company within a group exercises decisive influence over the commercial behaviour of its subsidiaries, then they both form part of the same economic undertaking. There is a presumption that a parent company exercises decisive influence over its wholly owned subsidiary. Legal responsibility for the infringement and the related fine can be attributed to both the subsidiary that actually participated in the cartel and the parent company or companies that exercised decisive influence over the commercial behaviour of that subsidiary at the relevant time.

Fines imposed and reductions granted by the Commission:

Name and location of company	Reduction (%)**	Reduction (euros)	Fine* (euros)	Total fine on group (euros)
KONE				
KONE Belgium S.A., Belgium	100	70 000 000	0	
KONE GmbH, Germany	50 + 1	63 630 000	62 370 000	
KONE Luxembourg S.à.r.l., Luxembourg	100	4 500 000	0	
KONE B.V. Liften en Roltrappen, The Netherlands	0	0	79 750 000	
Total for KONE				142 120 000
Mitsubishi Elevator Europe B.V., The Netherlands	0 + 1	18 600	1 841 400	1 841 400
Otis				
N.V. Otis S.A., Belgium	40 + 1	32 611 950	47 713 050	
Otis GmbH & Co OHG, Germany	25 + 1	55 156 500	159 043 500	
General Technic-Otis S.à.r.l., Luxembourg***	40 + 1	12 423 600	18 176 400	
Otis B.V., The Netherlands	100	108 035 000	0	
Total for Otis				224 932 950
Schindler				
Schindler S.A./N.V., Belgium	0 + 1	700 000	69 300 000	
Schindler Deutschland Holding GmbH, Germany	15 + 1	4 041 750	21 458 250	
Schindler S.à.r.l., Luxembourg	0 + 1	180 000	17 820 000	
Schindler Liften B.V., The Netherlands	0 + 1	355 250	35 169 750	
Total for Schindler				143 748 000
ThyssenKrupp****				
ThyssenKrupp Liften Ascenseurs N.V./S.A., Belgium	20 + 1	18 018 000	68 607 000	
ThyssenKrupp Aufzüge GmbH and ThyssenKrupp Fahrtreppen GmbH, Germany*****	0 + 1	3 780 000	374 220 000	
ThyssenKrupp Ascenseurs Luxembourg S.à.r.l., Luxembourg	0 + 1	135 000	13 365 000	
ThyssenKrupp Liften B.V., The Netherlands	40 + 1	16 047 150	23 477 850	
Total for ThyssenKrupp				479 669 850
TOTAL				992 312 200

(*) Fine imposed on the undertaking. The following parent companies are held jointly and severally liable with their respective national subsidiaries for the infringements and the related fines: for the Kone Group companies: KONE Corporation; for the Otis Group companies: United Technologies Corporation and Otis Elevator Company; for the Schindler Group companies: Schindler Holding Ltd; and for the ThyssenKrupp Group companies: ThyssenKrupp AG and ThyssenKrupp Elevator AG.

(**) Reduction (in %) granted under the Leniency Notice + reduction (in %) for cooperation outside the Leniency Notice, if applicable

(***) General Technic-Otis S.à.r.l. (GTO) operates under the joint control of its two parents, N.V. Otis S.A. and General Technic S.à.r.l. which are therefore held jointly and severally liable with GTO for the cartel in Luxembourg.

(****) In its decision of 21 January 1998 ([IP/98/70](#)), the Commission imposed a fine on ThyssenStainless AG (TKS) for its own behaviour and for the behaviour of Thyssen Stahl GmbH for participation in a cartel in the stainless steel sector (and on another undertaking controlled by Krupp Stahl; with regard to the part of the fine relating to the infringement of Thyssen Stahl, the decision was re-adopted on 20 December 2006 ([IP/06/1851](#))). As a result, the fines imposed on the ThyssenKrupp companies by today's decision were increased by 50%, as ThyssenKrupp is a repeat offender. ThyssenKrupp AG, the parent undertaking of all undertakings of the Thyssen Group found to have committed infringements in this decision, is the legal successor of both Thyssen Stahl and Krupp Stahl.

(*****) Jointly and severally

Action for damages

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages, submitting elements of the published decision as evidence that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without these being reduced on account of the Commission fine. A Green Paper on private enforcement has been published (see [IP/05/1634](#) and [MEMO/05/489](#)).

For more information on the Commission's action against cartels, see [MEMO/07/70](#).