Free Competition Theory and the secret agreements between companies. Saint-Gobain under the charges of cartel

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Abstract: *The European view of economic competition, which is the European Parliament view and enforced by the European Commission does not have a coherent theory of efficiency in allocating resources and justice on a market. The positive law proceeds at incriminating and penalizing with arbitrarily fixed fines the players on different markets but not offering a definition of what competition or free market means, not to mention a theory of the firm. It delivers, of course, a sort of theory, but we argue that it is not coherent and moreover, pretends to be what it cannot possible be, namely free of any value judgments. The present paper exposes an alternative view to the theory used by EC when decided to fine with 1.4 billion euros the European car glass suppliers Saint-Gobain, Pilkington, AGC and Soliver for cartelizing, and it also presents the case from the perspective of free competition theory based on private property rights of owners.*

Key words*: cartel, secret agreement, welfare losses, free competition, property rights, competition public policy*

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Introduction

The differences between neoclassical or mainstream competition theory and the free competition theory became more and more obvious. Especially when we read

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about European Commission (hereinafter EC) interventions in various cases of monopolies or cartels. At European level, the market is viewed as a sum of competitors which offer products and services to the consumers, but which can abuse by their power, thus creating welfare losses either to consumer or to competitors, but also to a vague entity namely the *society*. Of course, a first fundamental question which we can raise is who gave them that power? Is there a sort of natural ability of the entrepreneur to become extremely powerful or to permanently abuse by its privileged position on the market? The economic science teaches us quite different things. We believe that any abuse must be based on a theory of the aggressor, the aggressed and what is to be aggressed. The neo-classical competition theory fails to pay attention to such a theory. It fails because it insists on a certain view of the market (perfect competition model) which removes from entrepreneurs any incentive to act. (Mises, 1966, pp. 105) There is no secret anymore that the perfect competition model became the role model for competition public policies of the governments around the world (Blaug, 1992, pp.166). Fortunately, its idealistic and inconsistent assumptions do not correspond with the reality that we live in. (Armentano, 1999a, pp.18) It is not the purpose of the present analysis to restate all the differences between economic science and neoclassicism. Other authors have done this in a respectable manner (Hulsmann, 1999).

This paper makes a short inquiry in the case of the European car glass cartel in order to provide an alternative view of the market to the mainstream one. This is the free competition theory based on private property rights approach, where any individual or company can enter the production or selling of anything as long as it does not invade in an objective or visible way the property of others. (Rothbard, 2004a, pp. 654) First we will present a brief history of the case (which started in 2005 and culminated in 2008 with the fine imposed on the four leaders in car glass industry, Saint-Gobain, AGC, Pilkington and Soliver). In the second part, the paper presents some organizing details of the cartel and EC motivations for imposing the fine, and the third part comes with a critique of EC actions from the perspective of free competition theory.

A short history of the car glass cartel

According to EC the inquiries started in February, 2005[1], after a notice of a German lawyer (who sent a letter on October 7, 2003), the assignee of a client who remained anonymous during the inquiry. It is believed that the letter may have contained charges regarding companies specialized in the production of car glass that would be cartelized, exchanging “sensitive” information about

[1] EC decision available at http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/05/63&format=HTML&aged=1&language=EN&guiLanguage=en.

prices and market shares, with the purport of implementing "certain agreements and concerted actions". Thus, taking into consideration the mechanism which delivers car glass to car manufacturers who organize auctions where every glass producer comes with its own offer, EC concluded with absolute certainty, that this cartel forced the car manufacturers to accept prices which were secretly set before the auction and that the final consumers of cars suffered because of this a loss in welfare. Cartels, along with monopolies, oligopolies, secret agreements and state aids are penalized by the European competition legislation because each of them can cause welfare losses and a decrease in the efficiency of resource allocation at a European level. These negative effects do not correspond to the EC strategy which aims at creating a unique European competitive market granting consumers freedom to choose between various products[1].

The inquiries were held at the headquarters of the 4 top big car glass producers, the Compaigne of Saint Gobain (CSG), Pilkington, AGC and Soliver, in Belgium, Germany, France, Great Britain and Italy. During 2006, EC will send to these companies a request for information under Article 18 of Regulation no.1/2003[2], and on April 18, 2007 EC adopts a statement of objections (SO) based on information gathered. After consultation of the SO, Glaverbel and AGC request for leniency. This is a formal action permitted by the EC whenever a party involved in specific economic crimes decides to plead guilty first. The leniency application also provides reduction in fines for the first *criminal* who gets out of the cartel and *confesses.* But EC refused to apply leniency for the two companies, because they didn't comply with the official requirements of leniency program[3].

On November 12, 2008, after a decision of more than 200 pages, EC decides to impose 1.4 billion euros fine which *inter alia* is the highest fine ever imposed in the history of European cartels. The decision contains information about the European auto glass market and the main competitors with their turnover, about how the cartel was organized and its duration (this information can be found in the *Facts* chapter). Also, the decision contains information regarding the legality

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[1] The implicit objective of the Lisbon agenda.

[2] This is a revised edition of Regulation No. 17/62 which *inter alia* invests EC with the power to request information, to issue objections and conduct inquiries in certain cases.

[3] The most important condition is to inform first about the crime, before any other information or request of EC. See also http://ec.europa.eu/competition /cartels/leniency/ leniency.html.

of the cartel's actions in the light of the legal provisions which underlie the competition policy in the European Union and about imposing fines (these can be read at the *Legal provisions* chapter).

Cartel's organizing actions and EC motivation in regard to the decision to fine it

According to the EC, evidences concerning the existence of a cartel between European leaders in auto glass dates from 1998 and ends in 2003. In this period of time, as it is mentioned in the EC decision, there were certain bilateral and trilateral meetings between the companies, having as purpose "in particular the evaluation and monitoring of market shares, the allocation of car glass 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[1]". The decision offers information with respect to the location of meetings, and also their frequency and content. EC holds proofs which attest that car glass suppliers (CSG, Pilkington, AGC and Soliver) were setting the winner of the auction before the auction itself, according to the comparative advantages between them. Thus, according to EC "sometimes certain car glass parts or pieces were better for one supplier based on how much free production capacity it had or on low transport costs for instance[2]". Also, sometimes, when a car manufacturer wanted to work with a single car glass supplier, the companies were telling it that there are no sufficient capacities for it to honor the contract, thus *forcing* the car manufacturer to reorient toward another option, which of course was already planned by the cartel. Another functioning mechanism of the cartel, considered *sophisticated* by the EC, consisted in planning the winner according to every interest of a certain auction. Companies were organizing meetings where they agreed upon 'covering' each other concerning a minimum price (of the winner) and the highest prices (of the others), orienting in this way or *forcing,* in EC *language*, the allocation decision of car manufacturers.

The basic motivation of EC for the fine imposed on the car glass suppliers for establishing a cartel is the infringement of Article 81 (present 101) of the Treaty for Establishing the European Community (TEEC)[3] and Article 53 of the

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1 EC decision, pp. 26, available at http://ec.europa.eu/competition/antitrust/cases/dec_docs/39125/39125_1865_4.pdf.

2 Ibidem, pp. 35.

3 Available at http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/12002E.html.

European Economic Area (EEA)[1]. Both articles invoked by the EC altogether state the same thing, that any decision taken by a company or association between companies should be prohibited if it has the effect of "prevention, restriction or distortion of competition". The only difference is that they belong to treaties which have different purposes. This is the rule of law in the case of cartels and it is also the case of this analysis. If CSG, Pilkington, AGC and Soliver caused an infringement on Article 81 and Article 53, we know that it was concerning their actions which distorted competition on the European car glass market. There is no doubt about that. Moreover, the EC decision explains in detail the specific actions of the cartel such as "refusing price reductions to car manufacturers[2]", "limiting the disclosure of their production costs and other technical information[3]", "going beyond their own legitimate market share using specific tools to allocate contracts between themselves and..achieving a 'market share freeze'[4]", "claiming vis-à-vis car manufacturers to have a technical problem or a shortage of raw material for fine-tuning the market share balance[5]" etc. These are all infringements of the two Articles and in EC opinion, justify the 1.4 billion euro fine.

But by far the most interesting EC point of view regarding cartels in general is that it is not necessary for the incriminated companies to have a specific written agreement, as an agreement on a certain plan is not even necessary. It is sufficient for them to have expressed their common intention to act in a certain way on the market. But this cannot constitute a solid ground for a competition policy, because otherwise we can literally imagine that any unexpressed and *unintended* intention can be penalized at the political whim. If two companies act in the same way on a market but never had a single meeting for purposing this action, what has a judge to say about it? Moreover, if we consider the *anticompetitive* effects of cartels, what is the difference between two or more companies that cartelized unaware of each other actions and some that cartelized being aware and planning at length all cartel's future actions? Should the legislation be enforced in both cases? Or not? If it should be then all EC actions to discover the so-called secret agreement are useless since the penalty

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1 Available at http://www.efta.int/eea/~/media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf.

2 EC Decision, Note 104, pp. 36.

3 Ibidem, Note 106, pp. 37.

4 EC Decision, Note 110, pp. 38.

5 Ibidem, Note 118, pp. 42.

will be imposed in any event; on the other hand if it should not be, then EC is not really concerned with the effects that distort competition, but only to discover and penalize those who had the specific intention to harm competitors and consumers.

Table 1: Market shares of the main players on the European car glass market between 1998-2003

Year	Saint-Gobain	Pilkington	AGC	Soliver	Guardian	PPG	Others	Total sales (bn. euros)
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

Source*: EC estimations based on interviews with the companies involved in the cartel.*

Applying free competition theory

As we saw, EC will fine any entrepreneur who will infringe on Article 81 and Article 53, because to infringe these articles is to have *by default* an anticompetitive conduct. Yet, we believe that we need a more precise definition of what EC means by anticompetitive conduct. Normally, the essential feature of any entrepreneur motivated by consumer demand and profit is its dynamism. Its dynamism is always at the confluence between budget restrictions and the will to innovate and capture a bigger part of the consumers. In practice, the entrepreneur is guided by its earning capacity, and this can take the form of agreement with some other entrepreneurs, in order to decrease the operating costs on a specific market. If we accept the entrepreneurial dimension (the only one, after all) of the market, themselves we are able to understand its competitive and rivalry spirit. Competition and the competitiveness of entrepreneurs are elements always determined only by them, because they are the only true receivers of the existing needs on the market. Thus, the entrepreneurs are in permanent connection with consumers. Entrepreneurial movements cannot be designed without those who send the main message:

consumers. So it is at least contradictory, if not mistaken, to speak about the anticompetitive conduct of entrepreneurs. It is mistaken at least when arguing against entrepreneurs before delivering a coherent theory of entrepreneurial activity and consumer on the market.

But this is happening and the EC is the entity that supports this view. What we think it is essential to focus on is on what free competition theory has to say. For that purpose we are not interested in legal or moral actions of entrepreneurs, but in their economic actions. (Armentano, 1999b, pp. 14) From an economic point of view (which is the *language* for free competition theory) CSG, Pilkington, AGC and Soliver can become aggressors – or have an "anticompetitive conduct" – only if they infringe on the private property of other competitors, or of the consumers of their products. The legitimate private property rights on car glasses are the only ethical system which can usefully complete the economic analysis (Jora, 2009a). We can also analyze the case from a strictly scientific or value-free perspective but this will necessarily lead to a non-critical acceptance of any competition policy, good or bad, which EC sets forth. The purpose of the present analysis is an economic approach to the case based on the system of private property rights which is *ex definitio* an ethical system because it proposes certain values at which people should adhere. And the core of this system is the theorem of non-aggression, just stated. According to the EC decision to fine the cartel, there was no infringement on private property rights of any of the entrepreneurs involved. This helps us to conclude that, economically speaking the case presents no illegitimate action, thus remaining to identify the ground on which their actions were considered illegal.

EC considers (in the spirit of Article 81 and Article 53) that any entrepreneurial practice which "directly or indirectly fixes purchase prices and other commercial conditions" and "shares markets or supply sources" can become an anticompetitive one, with negative impact on the market and consumers. Therefore we reason that by restricting the competition (whatever that means) you cause negative effects on the entrepreneurs involved. From this we face two problems that we engage to solve. The first is what ethical system employs EC for considering the action of restricting competition a criminal one. We have to find out this because we know that from inside economic science we are not allowed to choose between different grades of economic competition, but only to present its effects. And the second problem is to determine the applicability of this supposed ethical system in the case of the European car glass cartel, where we try to examine if the ethics proposed by the EC is universal or uniform, because any ethical principle which is not universal misses its purpose.

The fundamental of any public policy, in our case, of competition public policy, must contain considerations that cannot remain value-free. Even the analysis of this case cannot be done on the false pretense of value free judgments[1]. But this is not even necessary. What we intent is to identify, within our own methodological constraints, the ethical alternative that EC proposes to the system of private property, a universal one. From a scientific point of view, economics is useful to determine the effects of the cartel put in practice by Saint-Gobain, Pilkington, AGC and Soliver, but useless to decree whether the action is good or bad. Still, EC identifies the cartel action as *bad* because it *restricts competition* and goes further to fine the companies engaged in it. Restricting competition can cause losses to other competitors even to the limit of bankruptcy. Competition is restricted whenever the number of competitors on the market decreases and is re-established if new competitors enter the market and compete for the same profit margins with the existing competitors. Considering this logic, we can argue that the fine itself caused a restriction of competition. The 1.4 billion euros, money that will enter the EC budget, will produce significant costs of the same value to the companies' management. Thus, the fine will cause a proportional decrease in grade of competition on the European car glass market. The punishment has been enforced, it is true and that means the cartel was fined. But this action does not exclude the economic consequences. And this can be: drastic reduction in investments, price increases for some products, dismissal of some people with important entrepreneurial merits for the company etc. Thus we conclude that we deal with a preferential (or utilitarian) ethics promoted and enforced by EC. This type of ethics stems from a fallacious concept of competition and entrepreneurial practice which EC uses. EC fines a certain part of the market (composed of car glass suppliers) in the benefit (not yet estimated by EC, and maybe not even estimable) of car

[1] To examine a cartel case or any other competition issue mentioned by the competition law, as economists (which according to modern science means free of value judgments) we can do it either by passive and noncritical acceptance of any past events produced in the case (a form of simply relating the facts), or by completely unaware of any ethical considerations implicitly in any approval or disapproval of a fact, or by candid acceptance of the failure or inappropriateness of economic science in studying these type of cases and borrowing a science of ethics. The first option is the position of an historian, the second is the position of an economist who refuses to be aware of its own implicitly ethical position because he is stuck in an almost *Taliban* and self-contradictory *wertfreiht* and the third is the position of an ethical economist who searches for universal solutions to the problems encountered and the one who admits that ethics has rational foundations.

manufacturers, the industrial consumers of car glass. The question we raise is what criteria EC used for distinguish between the relative importance on the market of car manufacturers ("cartel's victims") and those of car glass suppliers ("cartel organizers"). The importance of one entrepreneurial group over another must reflect an ethical option, but this cannot be otherwise than universal or applicable to all people. EC does not possess such an ethical option, and the simple plea for the supposed advantages that competition brings is not alone sufficient. Because, for example, how can we argue remaining strictly economists in front of people for whom competition is not desirable or who understand the competition process as a war between selfish individual interests which always throws out the weaker ones? In that case, it becomes obvious that EC is not able to promote competition only by using economic considerations, and if adopts an ethical system this cannot be utilitarian because it is not universal, but preferential.

Also, EC proves a partial understanding of the micro economic concept like demand and supply when decides to fine car glass suppliers on the ground of "secret agreement" which favors them, but causes losses to the consumers. According to this unilateral and obtuse logic, the demand side possesses a kind of mystical sovereignty over the supply side. However, in the economic realm, there is a strictly and assumed dependence between demand factors with their purchase power and those of supply, specialized in satisfying needs. The consumer-producer dependency is kept as long as the former voluntarily uses its purchase power for buying producer's goods, and the latter proceeds also voluntarily in delivering those goods. In the free competition theory, a *crime* occurs whenever there is an aggression on private property rights. In other words, economic science or its extended version, praxeology, is not concerned with determining the methods for satisfying consumers, and also does not assign a special importance to them compared with producers and neither does it consider the moral or ethical implications of the chosen methods. Economics only states that there are needs that by their nature must be fulfilled. From their position, as private owners of resources, Saint-Gobain, Pilkington, AGC and Soliver, did not have *ex ante* any economic obligation to satisfy car manufacturer's needs. We can speak about economic and legal obligation only when a transaction is accepted by all parties. The fundamental theorem of exchange states very clearly that once accepted a transaction is viewed by both consumer and producer as a step forward to a more satisfactory state than the previous one, before the transaction. Thus we arrive at the following fundamental problem: counterfactually, what would the consumers have earned? Or, accepting the hypothesis that reveals the so-called welfare losses for car manufacturers and consumers, we ask: Losses compared to what

other possible earnings? Can EC determine which would have been the counterfactual earnings? We believe it can't, taking into consideration the theoretical and methodological difficulty of this action, and furthermore the absence of clear evidence (at least from official documents concerning the case) of possible losses.

On some economic issues of the case

As we could see, the fine imposed to Saint-Gobain, Pilkington, AGC and Soliver is based on the legal provisions of Article 101 of TEEC and Article 53 of EEA. The basic illegal actions in this case can be summed up as follows: allocation of contracts between cartel members, maintaining a supposed stability of their market share and limitation of information regarding glass supply in the control of car manufacturers. What needs to be analyzed in this context is the economic effect of the cartel, which EC considers to be anticompetitive. The allocation of contracts between cartel members is far from being an anticompetitive practice, as long as even EC admits in Note 112 that any agreement between companies must be interpreted "in the light of their respective profitability analysis[1]" (therefore how can we disconnect competition from the essential principle of profitability?) and further on Note 117 where EC discovers one of the fundamental liberties of free exchange arguing that although contracts had been allocated in respect of the personal interests of the cartel members, the practice "didn't always worked 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[2]". It is very interesting to determine in the course of EC objections numerous entrepreneurial actions that are completely compatible with economic laws (see Note 106 where it mentions the opportunity of allocating contracts which "was made with the purpose of allocating and better re-allocating glass pieces between them", or Note 112, which presented what alternative entrepreneurs had to avoid losses "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 car glass parts"; also see Note 117 where EC comments on the meetings between companies and where "proposed solutions were sometimes made to adjust for losses in order to try to ensure stability of

[1] EC decision, pp. 39.

[2] EC decision, pp. 41.

their respective market shares") but paradoxically *illegal*. Thus, even if these actions are considered illegal from the EC perspective, a sort of rational intuition confirms their compatibility with the normal economic conduct of an entrepreneur (Topan, 2009, Jora, 2009b). And once again it becomes clear why an ethical position must be embedded in our analysis.

EC considers (Note 130) an explicit or written agreement of the parts involved in the cartel is not necessary because even the intention can be incriminated. "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 behavior of the parties[1]" (EC Decision, Note 474). But from a liberal point of view, we cannot conceive a legal system that proposes to sanction the intention of a people or association of people. Any legal system that does not make a clear distinction between aggression (requesting the proof of the aggressed property) and non-aggression is at least problematic, if not *ipso facto* a potential aggressor. If we reason by the logic of such a system, it follows for example, that the intention of a company to decrease technological costs by selecting only the best suppliers in order to maintain or increase its market share can be considered an illegal action, although there will surely be at least one supplier and one consumer who will benefit from this action. How can EC decide between their and other excluded suppliers' importance? And how can this be done remaining strictly value-free?

Other practical aspects that EC finds unnecessary to discuss in the economy of this case (but extremely important – we believe – for a prospect economic justification) are those regarding the concrete proofs of the damages caused by the cartel (increasing prices for a certain car glass part[2], decreasing the quantity

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1 EC decision, pp. 128.

2 EC holds that car manufacturers were forced to choose a specific higher price combination given by the cartelists, who agreed in secret upon it. It is important to mention that, even if there had not been any secret agreement between the cartelists, the car manufacturers would still had to choose between exactly the same options or same competitors (each one fixing its own price) and, that competitors were declaring *ex ante* the winner of the auction the one with the smallest price. Thus, not taking into account the fact that car glass suppliers could not increase the price above a reasonable objective limit, even if they would have done it, in the end, the deal was to be signed at a smaller price than the superior limit agreed for the "losers" of the auction. Furthermore, the fact that EC gave examples where car manufacturers did not choose the price combination agreed in secret by the cartelists states as proof for the power to react of the car manufacturers against the so-called criminal actions of the cartel.

sold to car manufacturers, a spectacular increase in turnover for the companies involved in the cartel, the testimonials of car manufacturers, considered as victims of this cartel) which by this moment were not yet presented. They are extremely important if we accept the economic magnitude of the case.

Table 2: The first two most powerful companies by turnover

Year	SAINT-GOBAIN(mil.euros)	PILKINGTON (mil.euros)
1993	10.906	-
1994	11.357	-
1995	10.719	-
1996	13.931	-
1997	16.324	-
1998	17.821	3.622
1999	22.952	3.367
2000	28.815	3.359
2001	30.390	3.419
2002	30.274	3.370
2003	29.590	3.292
2004	32.172	3.328
2005	35.110	-
2006	41.596	-
2007	43.421	-

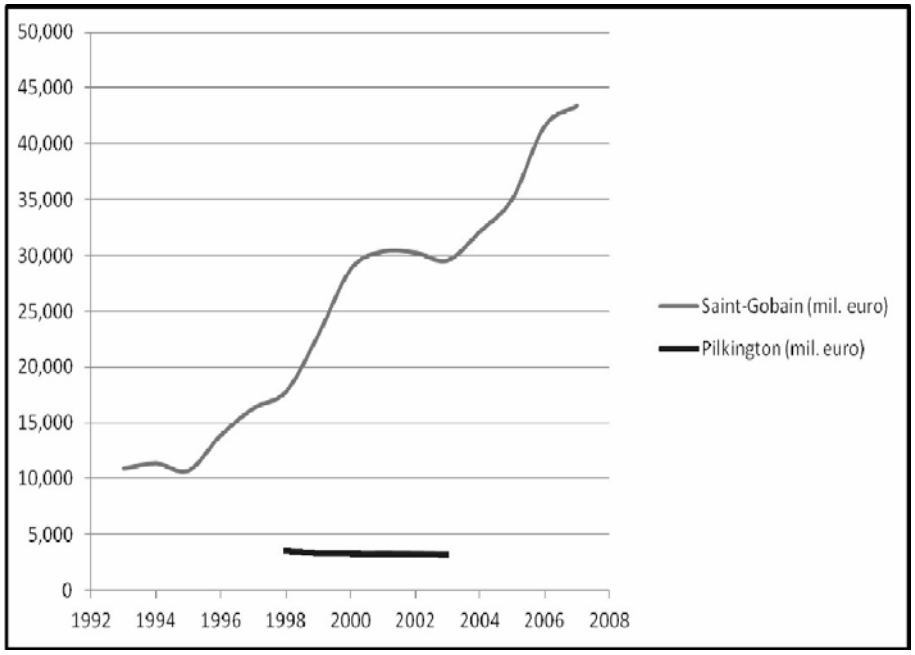
Source*: Year of audited companies reports.*

The presented table illustrates a sort of normal distribution of the turnover over time in the case of Saint-Gobain, the leader of the cartel. Although the cartel was considered by the EC only between 1998 and 2003, we considered relevant a margin of +/- 4 years to observe the distribution of sales increases. As concerns Pilkington, it can be observed how year 1998 (the start point of the cartel) is the sole and the last year with high profits for it.

The statistics prove the contrary of what EC states. In despite of organizing the cartel, which should suppose a better standard of profits for all the companies involved, Saint-Gobain is the only company with increasing turnovers. But this is not a proof for the successful leading of the cartel, because the increasing turnovers dated before the onset of the so-called cartel, on the one hand, and, on the other hand, increasing turnovers is not a guarantee for success in business; this can reveal a malpractice in coordination between members with

the prospect of disintegration of the cartel (Rothbard, 2004b, pp.644, Stamate, 2009). Table 1 presents Saint-Gobain having a normal distribution over the years (1998-2003) of the market share (between 40-50%), but if we look at the official year reports we find a steady increase in turnover; the question is by what standard did EC measure Saint-Gobain market share? Any increase or freezing of the market share must be analyzed in relation to a given optimal standard. From the perspective of free competition theory, this standard is a subjective value of each company based on economic calculation and natural structure of market incentives, which cannot be determined by economists or outside observers. Also, Pilkington, contrary to what EC estimated (see Table 1) encountered an important decrease in turnover in the active period of the cartel, which normally could (should?) be interpreted also as a decrease in market share.

Graph 1: Turnover evolution of the first two most powerful companies



Cartelist's testimonials to the accusation brought by EC

Saint-Gobain considers that EC did not succeed to prove the existence of a coherent cartel plan in the field of European car glass market, although the

company admits the existence of bilateral and trilateral meetings between the cartel members. In fact, Saint-Gobain does not admit the existence of a global centralized plan[1], because this would have to take into consideration the purchasing power of car manufacturers (in continual change) and also a functional mechanism for securing the market shares. The French company also argues that the evidence brought against it by the EC concerning price coordination and allocation of contracts at auctions is not sufficient *per se* to prove the existence of a cartel. To demonstrate the shaky foundation of the supposed cartel agreement, Saint-Gobain mentions that the practice of 'covering each other' in auctions is not a guarantee for success.

Pilkington, the second most important company accused, holds that EC cannot practically prove the existence of the cartel. The company explains in a statement to EC that, even if the practices truly existed, either they were not implemented or they failed. "Pilkington claims that the Commission's evidence is not credible, as it cannot sustain the funding of an infringement by reference to the standard of proof[2]". Also, Pilkington explains that the simple proof of the existence of a stable market share of the competitors does not reveal the existence of a secret agreement. Pilkington suggests that there are many practical difficulties to implement such an agreement. For example, for allocating contracts between competitors it needed a common effort of coordination of all industry key-elements, which fact the Commission did not prove.

Final conclusions

From the perspective of free competition theory the European car glass cartel raises two important problems. First is an ethical problem that concerns the normative support of competition public policy which gives power to EC to fine the companies that organize cartels and the second is an economic problem. Neither to the ethical nor to the economic problem does EC offer a coherent explanation. The nature of competition process is not only an economic issue. Peaceful economic cooperation between people or association of people can be a positive mean for many individuals who desire more goods and services, but still, not for all of them. The utilitarian approach to competition proves this fact.

The European case of car glass cartel needed a review in the light of what we consider the best alternative to the present utilitarian approach, embraced by EC

[1] EC decision, p. 114.

[2] EC decision, p. 121.

and many other economists. This was presented as the system of private property rights which is the only system favourable to economic calculation and, in the end, to economic prosperity. In fact, there can be no other social systems in the world but based on either exclusive private property rights (pure capitalism) or public or communal property (socialism). The idea of a third system, often mentioned by modern scientists or analysts as *interventionism* is a combination between the first two, but as Ludwig von Mises would say, always on the edge ready to fall into the realm of socialism (Mises, 1952, pp. 28). But as it was presented, the system of private property rights is an ethical system, because it argues for peaceful cooperation between individuals and incriminates aggression between them, thus considering this a *good* means for socially interacting. As we could see, the system of private property rights sets forth a natural structure of market incentives for entrepreneurs and gives them the opportunity to use economic calculation (in monetary terms) for deciding whether or not an investment is good or bad. By contrast, government intervention (in this case, EC) disrupts this order and creates unnatural and illegitimate incentives for the market participants. Thus they will respond to government incentives (artificially created by the public policy) instead of market natural incentives (based on the natural advantages discovered in time by the companies). Applying this theory to the present case, we can argue that EC extracted from Saint-Gobain, Pilkington, AGC and Soliver an amount of money which could be used by the four to invest more in production or any other thing (even leisure). With a lesser quantity of money, it is possible that companies lose some of their appetite to invest. Meanwhile, the car manufacturers can benefit if EC takes the risk of “losing” in auctions. On long term, this situation can lead to stagnation of innovation on the car glass market, thus leaving the consumers with lesser options.

But we explained these arguments from the perspective of free competition theory, where there is no aggression until someone invades the property rights of others. This view is completely opposite to the mainstream neoclassical one, which decrees the perfect competition model as the best one to analyze the *imperfections* of a market or the market *failures*, and above that considers itself value free. Free competition theory must necessarily mean the absence of coercion and the right of private owners of resources to do whatever they need as long as this does not affect in a measurable or objective way the property of others.

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