C/2024/7197

29.11.2024

# Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT. 40728 – Corning

(C/2024/7197)

## 1. Introduction

(1) According to Article 9 of the 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], the Commission may decide – in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment – to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

## 2. Summary of the Case

(2) On 6 November 2024 the Commission initiated proceedings within the meaning of Article 2(1) of Regulation (EC) No 773/2004 of 7 April 2004 against Corning Incorporated ('Corning') and adopted a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003 ('preliminary assessment') concerning an alleged infringement of Article 102 of the Treaty on the Functioning of the European Union ('TFEU'). The alleged infringement concerns alkali-aluminosilicate glass ('Alkali-AS Glass'), which is a durable (break resistant) glass type mainly used as cover glass of handheld electronic devices such as mobile phones, tablets, and smart watches. Alkali-AS Glass has two commercially relevant subtypes, lithium aluminosilicate glass ('LAS Glass') and sodium aluminosilicate glass ('NAS Glass') [2].

(3) According to the preliminary assessment, Corning is dominant on the worldwide market for the supply of Alkali-AS Glass excluding the Alkali-AS Glass products used by Apple Inc. ('Apple') as well as on the potential worldwide market for the supply of LAS Glass excluding the LAS Glass products used by Apple. The preliminary assessment sets out the concern that Corning may have abused its dominant position by engaging in exclusive dealing vis-à-vis original equipment manufacturers ('OEMs') [3], especially OEMs of handheld devices, and finishers, [4] thereby excluding competing glass manufacturers from the market. The evidence on the Commission's file suggests that Corning's conduct has been ongoing at least since 2016.

(4) Corning's exclusive dealing practices with OEMs include: (i) exclusive sourcing obligations, whereby OEMs must source from Corning a high share of their demand for Alkali-AS Glass or LAS Glass, (ii) rebates conditioned on the compliance with the exclusive sourcing obligations; and (iii) English clauses, obliging OEMs to report to Corning competitive offers from competing glass manufacturers and allowing OEMs to accept such offers only if Corning does not match the price.

[1] OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. For the purposes of this notice, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.

[2] The 'N' in NAS refers to Natrium, the Latin name of sodium.

[3] Manufacturers who produce and sell under their own brands end products that incorporate Alkali-AS Glass and transparent clear glass ceramics; glass ceramics are ceramic materials formed through the controlled nucleation and crystallisation of glass ('Clear Glass Ceramics').

[4] Undertakings that process raw glass supplied by glass manufacturers. Processing includes, inter alia, the chemical strengthening of raw glass, polishing, grinding, etching, bending of the edges etc.

(5) Corning's exclusive dealing practices with finishers include exclusive purchase obligations, which provide that finishers must purchase all, or nearly all of their requirements for Alkali-AS Glass or LAS Glass that complies with certain parameters from Corning (with these parameters being defined in a way that they cover most LAS Glass products on the market).

## 3. **The Main Content of the Offered Commitments**

(6) Corning does not agree with the Commission's Preliminary Assessment. Corning has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003, to meet the Commission's competition concerns.

(7) These commitments are briefly summarised below and published in full in English on the website of the Directorate-General for Competition at:

https://ec.europa.eu/competition-policy/index_en

(8) The Commitments apply to covers of handheld electronic devices and touch-enabled laptops made from Alkali-AS Glass (including both LAS Glass and NAS Glass) and Clear Glass Ceramics, including bendable glass covers for foldable devices. In current contracts with OEMs and finishers, Corning commits to waive all exclusive dealing arrangements mentioned in paragraphs (4) and (5) above. In future contracts, Corning commits not to use such clauses or similar clauses that have the same effect. In addition, the following rules apply:

(a) Agreements with OEMs: In relation to the OEMs' EEA demand, Corning commits not to use any purchasing requirements (i.e., 0 %) or price advantages (e.g., rebates, discounts) conditional upon compliance with such requirements. For the OEMs' non-EEA demand, Corning may not:

— require an OEM to source, or condition price advantages on sourcing, more than 50 % of its combined demand for NAS Glass, LAS Glass and Clear Glass Ceramics covers from Corning (overall cap);

— require an OEM to source, or condition price advantages on sourcing, more than 50 % of its demand for LAS Glass from Corning (LAS Glass cap); and

— require an OEM to source, or condition price advantages on sourcing, more than 50 % of its demand for Clear Glass Ceramics from Corning (Clear Glass Ceramics cap).

(b) Agreements with finishers: Corning may not require a finisher to purchase, or condition price advantages on purchasing, more than 50 % of its combined demand for NAS Glass, LAS Glass, and Clear Ceramics from Corning (overall cap). Within the overall cap the finisher can determine freely the quantity of the different cover materials it wishes to purchase from Corning to comply with the overall cap.

(9) In addition, in relation to the enforcement of its patents, Corning commits to sue (either in court or via arbitration) for patent infringement, but not for breach of contract. Corning further commits not to use any mechanism under contract law (contractual penalties, early termination, contractual damages etc) for the enforcement of its patents. These provisions aim to prevent Corning from bypassing the patent enforcement system and enforcing its patents via contractual restrictions.

(10) To ensure that market participants worldwide are properly informed, Corning has committed to arrange the delivery of a market communication to key stakeholders (along with the text of the commitments), which explains the Commission's concerns and summarizes the commitments in simple language. Corning has committed to translate the market communication and the text of the commitments to Mandarin Chinese and to have both the English and the Mandarin Chinese versions delivered to Chinese stakeholders.

(11) The Commitments will be applicable worldwide and will remain in force for a period of nine years from the date on which Corning receives formal notification of the Commission's decision under Article 9(1) of Regulation (EC) No 1/2003. Corning commits to appoint an independent Monitoring Trustee who will verify compliance with the commitments and will report to the Commission.

4. **Invitation to make Comments**

(12) Subject to market testing, the Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition, to be binding.

(13) In accordance with Article 27(4) of Regulation 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than 13 January 2025. Interested third parties are also asked to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.

(14) Answers and comments should preferably be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed commitments, the Commission also invites you to suggest a possible solution.

(15) Observations can be sent to the Commission under reference AT.40728 – Corning by email (COMP-GREFFE-ANTITRUST@ec.europa.eu and COMP-E2-MAIL@ec.europa.eu) or by post, to the following address:

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Directorate-General for Competition
Antitrust Registry
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