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TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLOČENSTEV
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

Press and Information

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Judgment of the Court of First Instance in Joined Cases T-217/03 and T-245/03

Fédération nationale de la coopération bétail et viande (FNCBV), Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Fédération nationale bovine (FNB), Fédération nationale des producteurs de lait (FNPL), Jeunes agriculteurs (JA) v Commission of the European Communities

THE COURT OF FIRST INSTANCE CONFIRMS, IN ESSENCE, THE DECISION OF THE COMMISSION PENALISING AN AGREEMENT IN THE BEEF SECTOR

However, the total amount of the fines has been reduced from EUR 15.96 million to EUR 11.97 million. The judgment confirms that the Community competition rules apply in the field of agriculture.

By decision of 2 April 2003,¹ the Commission imposed fines totalling EUR 16.68 million on the main French federations in the beef sector (namely, the applicants in the present cases and the Fédération nationale de l'industrie et des commerces en gros des viandes²).

Those federations, which represent farmers and slaughterers, were penalised for having participated in an arrangement contrary to Community law by a written agreement of 24 October 2001 aimed at setting a minimum purchase price for certain categories of beef and suspending beef imports into France. That agreement continued in oral form beyond the end of November 2001, the date on which it was supposed to come to an end, despite a warning from the Commission which alerted the federations to its unlawful nature.

The French federations have brought proceedings before the Court of First Instance for annulment of the Commission decision and, in the alternative, for cancellation or reduction of the fines thereby imposed on them.

The Court of First Instance confirms in essence the Commission decision.

¹ Commission Decision 2003/600/EC of 2 April 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/C.38.279/F3 — French beef) (OJ 2003 L 209, p. 12).

² The Fédération nationale de l'industrie et des commerces en gros des viandes also brought an action for annulment of the fine imposed on it by that decision (Case T-252/03). By Order of 9 November 2004, the Court of First Instance dismissed that application as inadmissible.

The conditions required for application of the competition rules to the case before the Court

Although the federations do not deny that they concluded an agreement on 24 October 2001, they maintain that it did not constitute an infringement of the competition rules.

The Court considers that since the activities of farm operators, farmers or breeders are most certainly economic activities, the unions which bring them together and represent them, as well as the federations which group them together, may be regarded as associations of undertakings for the purposes of applying those rules. The Court also takes the view that, in the present case, the Commission has not restricted the exercise of freedom of trade union activity in their regard.

The Court confirms the Commission's findings that the agreement in dispute appreciably affected trade between Member States and constituted a restriction of competition. The fact that the applicants' conduct was known, authorised or even encouraged by national authorities has no bearing on the applicability of Article 81 EC. Lastly, the Court confirmed that the agreement in dispute could not benefit from the exemption provided for in Regulation No 26³ for certain activities related to the production of and trade in agricultural products.

Assessment by the Commission of the duration of the infringement

The Court points out that an infringement of competition law, however brief, is contrary to Community law. It also finds that the Commission did not err in finding that the "imports" aspect of the agreement had not been completely abandoned as from 31 October 2001.

As regards the existence of an oral agreement between the federations representing breeders and those representing slaughterers, the Commission acted quite properly in basing its analysis on a body of evidence showing that such an oral agreement between the parties had extended the agreement beyond 30 November 2001. The Court found, therefore, that the Commission was fully entitled to conclude that the duration of the infringement covered the period from 24 October 2001 to 11 January 2002.

The taking into account of the aggregate turnover of the members of the applicant federations for the purposes of calculating compliance with the ceiling on fines

The Court considers that, when fixing the amount of the fines, the Commission was entitled to take into account the turnover of the members of the applicant federations for the purposes of calculating the 10% ceiling,⁴ provided that the members in question were active on the markets affected by the infringements penalised. In effect, only the turnover of such members constituted an adequate indication in the present case of the applicants' economic power and thus of the influence that they were able to exert on the markets concerned. The Court concludes that the fines imposed on the applicants do not exceed the ceiling of 10% of the turnover of their respective members. The Court points out, nevertheless, that where the Commission penalises an association of undertakings and calculates compliance with the ceiling on the basis of the turnover achieved by all the members of that association, or by only

³ Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (OJ, English Special Edition, Series I, 1959-62, p. 129).

⁴ Under Article 15(2) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 81 and 82 of the Treaty (OJ, English Special Edition, Series I, 1959-62, p. 87), the Commission may impose on undertakings or associations of undertakings fines not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement.

some of them, it must make express mention of this in its decision and set out the reasons justifying that approach.

Reduction of the fines

The Court finds that, in the contested decision, the Commission had taken into account, first, the fact that it was penalising for the first time an agreement concluded exclusively between federations of trade unions, which related to a basic agricultural product and involved two links in the production chain and, secondly, the specific economic context of the case, which was marked in particular by the serious crisis in the beef sector that began in 2000 following the discovery of new cases of bovine spongiform encephalopathy ("mad cow disease"). Accordingly, the Commission had reduced the amount of the fines imposed on the applicants by 60%, in accordance with point 5(b) of its Guidelines on the method of setting fines.⁵

However, in the view of the Court, that reduction – albeit considerable – does not sufficiently take into account the exceptional set of circumstances in the present case. **Accordingly, the Court of First Instance, in the exercise of its unlimited jurisdiction, considers it appropriate to set at 70% the percentage reduction to be granted to the applicants in respect of their fines (that is to say, to apply an additional 10% reduction to the amounts of the fines).**

The fines are therefore fixed at a total amount of EUR 11.97 million, allocated as follows: EUR 9 000 000 for the FNSEA; EUR 1 080 000 for the FNB; EUR 1 080 000 for the FNPL; EUR 450 000 for the JA; and EUR 360 000 for the FNCBV.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against this decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE, EN, ES and FR

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-217/03>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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⁵ Communication of the Commission – Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty.