

СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ  
TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS  
AZ EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
CURTEA DE JUSTIȚIE A COMUNITĂȚILOR EUROPENE  
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SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### **PRESS RELEASE No 06/07**

25 January 2007

Judgments of the Court of Justice in Cases C-403/04 P and C-405/04 P, C-407/04 P, C-411/04 P

*Sumitomo Metal Industries Ltd, Nippon Steel Corp., Dalmine SpA, Salzgitter Mannesmann GmbH v Commission of the European Communities*

### **THE COURT UPHOLDS THE JUDGMENT OF THE COURT OF FIRST INSTANCE PENALISING A CARTEL OF STEEL TUBES PRODUCERS**

*The producers did not prove that the Court of First Instance made errors of law in its judgment*

By decision of 8 December 1999,<sup>1</sup> the European Commission ordered eight undertakings (four Japanese companies and four European companies) which produced seamless steel tubes, used in the oil and gas industry, to pay fines amounting to EUR 99 million for an infringement of Community competition law.

The Commission considered that the undertakings had concluded an agreement having as its object, in particular, the observance of their domestic markets. According to that agreement, each undertaking undertook not to sell OCTG standard pipe and project pipe on the domestic market of another party to the agreement.

The agreement was concluded at meetings between Community and Japanese producers known as the 'Europe-Japan Club'.

The principle of observance of domestic markets was designated by the term 'fundamentals'. The Commission established that those fundamental rules had actually been observed and that, accordingly, the agreement in question had had anti-competitive effects on the common market.

Seven of the eight undertakings, Mannesmannröhren-Werke (now Salzgitter), Corus UK, Dalmine, JFE Engineering, Nippon Steel, JFE Steel and Sumitomo Metal Industries, brought actions against that decision.

In its judgment of 8 July 2004, the Court of First Instance substantially upheld the Commission's decision. However, it considered that the Commission had not adduced proof of the entire duration of the infringement.

Four of those undertakings lodged an appeal before the Court of Justice of the European Communities, seeking to have set aside the judgment of the Court of First Instance in so far as it

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<sup>1</sup> Commission Decision 2003/382/EC relating to a proceeding under Article 81 of the EC Treaty (Case IV-E-1/35.860-B seamless steel tubes)

concerned them and, in the alternative, seeking annulment of or a reduction in the fines imposed on them by that judgment.

**The Court of Justice substantially upholds the judgment of the Court of First Instance.**

*As regards evidence of the existence of the infringement*, the Court of First Instance did not err in law in concluding that there was a cartel designed to share domestic markets and having an appreciable effect on trade between Member States.

Furthermore, the Court of First Instance was correct to rely on consistent case-law according to which there is no need to prove the actual existence of harm to intra-Community trade for the purposes of the application of competition law,<sup>2</sup> since it is sufficient to prove that an agreement is potentially capable of producing such an effect.

*As regards the Japanese producers' participation in the infringement*, as Nippon Steel did not formally dispute having participated in the meetings of the "Europe-Japan Club" or put forward any evidence to establish that its participation in those meetings was without any anti-competitive intention concerning the protection of the domestic markets, the Court of First Instance did not err in law in concluding that they participated in the infringement.

*As regards the calculation of the fines*, the Court of Justice confirms that the Court of First Instance was correct to accept the Commission's approach, which was consistent with its "Guidelines"<sup>3</sup> aimed at defining the context of its margin of discretion in setting fines.

**Consequently, the Court of Justice dismisses the appeals.**

**Accordingly, the fines initially set by the Court of First Instance are maintained, namely:**

**EUR 12 600 000 for Salzgitter Mannesmann GmbH; EUR 10 080 000 for Dalmine SpA; EUR 10 935 000 for Nippon Steel Corp.; and EUR 10 935 000 for Sumitomo Metal Industries Ltd.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: DE, EN, ES, FR, IT*

*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=C-403/04>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-407/04>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-411/04>

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

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<sup>2</sup> In the words of Article 81 of the EC Treaty, the following are to be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practice which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

<sup>3</sup> Commission Notice – 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 (98/C/03).