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Press and Information

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Judgment of the Court of First Instance in Case T-170/06

Alrosa Company Ltd v Commission of the European Communities

THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION'S DECISION MAKING BINDING THE COMMITMENTS PROPOSED BY DE BEERS TO CEASE ALL PURCHASES OF ROUGH DIAMONDS FROM ALROSA

The fact that an undertaking has proposed commitments at a particular time does not relieve the Commission of its duty to assess whether they are proportionate

The Russian company Alrosa Company Ltd and the Luxembourg company De Beers are active on the worldwide market for the production and supply of rough diamonds, on which they occupy the number two and number one positions respectively.

In 2002, they notified to the Commission a trading agreement entered into for a five-year period under which Alrosa undertook to supply rough diamonds to De Beers to the value of USD 800 million a year.

Following that notification, the Commission initiated two sets of proceedings, one based on Article 81 EC and the other on Article 82 EC. The first was initiated against both companies and the second against De Beers alone.

In December 2004, Alrosa and De Beers proposed joint commitments to the Commission providing for the progressive reduction in sales of rough diamonds by Alrosa to De Beers, the value of which was to go down from USD 700 million in 2005 to USD 275 million in 2010, and subsequently to be capped at that level. Those commitments were the subject of a notice in the *Official Journal of the European Union* and 21 interested third parties submitted comments to the Commission in that regard.

On 25 January 2006, in the proceedings initiated under Article 82 EC, De Beers individually offered new commitments to the Commission providing for the definitive cessation of all purchases of rough diamonds from Alrosa with effect from 2009, following a period of progressive reduction in those purchases between 2006 and 2008.

On 26 January 2006, the Commission invited Alrosa to state its position on the commitments proposed by De Beers and at the same time sent to it a non-confidential copy of the comments of the 21 interested third parties relating to the joint commitments of December 2004.

On 22 February 2006, the Commission adopted, pursuant to Article 9(1) of Regulation No 1/2003, a formal decision¹ making binding the individual commitments proposed by De Beers in January 2006.

By its judgment delivered today, the Court of First Instance annuls that decision of the Commission.

The Court holds, first of all, that **only a decision of the Commission can give binding legal force to the commitments proposed by undertakings.**

The Court next states that **the Commission has a margin of discretion in the choice offered to it by Regulation No 1/2003** as to how commitments proposed by the undertakings concerned are to be made binding and to adopt, for that purpose, a decision under Article 9 or to follow the procedure laid down under Article 7(1) of that regulation, which requires that an infringement of the competition rules under the EC Treaty be established. However, **the Commission is not thereby relieved of the obligation to comply with the principle of proportionality** in either case, irrespective of the voluntary nature of the commitments proposed by the undertakings concerned or the nature of the proceedings under Article 9(1) of Regulation No 1/2003.

Since the review of the proportionality of a measure is an objective review, the appropriateness of and the need for the contested decision must therefore be assessed in relation to the aim pursued by the institution.

The Court takes the view in the present case that the complete prohibition of all commercial relations between the two parties with effect from 2009 is manifestly disproportionate and that only exceptional circumstances, such as, in particular, the existence of a possible collective dominant position, would justify the extinction of the contractual freedom of the parties. In the present case, the Commission based its decision exclusively on the dominant position held by De Beers.

The Court also holds that the Commission merely accepted the commitments proposed by De Beers at face value, without looking for alternative solutions which might have better respected the contractual freedom of the parties.

For the sake of completeness, the Court holds that Alrosa had **a right to be heard on the individual commitments proposed by De Beers** in the proceedings initiated against the latter company alone. In the circumstances of the present case, Alrosa was not given the opportunity to exercise that right fully, even though the extent to which such an irregularity might have affected the Commission's decision cannot be precisely determined.

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

¹ Commission Decision 2006/520/EC of 22 February 2006 relating to a proceeding pursuant to Article 82 EC and Article 54 of the EEA Agreement (Case COMP/B-2/38.381 - De Beers).

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

Languages available: FR BG CS ES DE EN HU PL PT RO SK SL

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-170/06>

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

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Pictures of the delivery of the judgment are available on EbS "Europe by Satellite", a service provided by the European Commission, Directorate-General Press and Communications,

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