



ПЪРВОИНСТАНЦИОНЕН СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
SŮD PRVNÍHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS
ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT CHÉADCHÉIME NA GCÓMHPHOBAL EORPACH
TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU PIRMĀS INSTANCES TIESA

EUROPOS BENDRIŲ PIRMOSIOS INSTANCIJOS TEISMAS
Az EURÓPAI KÖZÖSSÉGEK ELSŐFOKÚ BÍRÓSÁGA
IL-QORTI TAL-PRIMISTANZA TAL-KOMUNITAJIET EWROPEJ
GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN
SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS
TRIBUNALUL DE PRIMĂ INSTANȚĂ AL COMUNITĂȚILOR EUROPENE
SÚD PRVÉHO STUPŇA EURÓPSKÝCH SPOLEČENSTEV
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

Press and Information

PRESS RELEASE No° 38/08

18 June 2008

Judgment of the Court of First Instance in Case T-410/03

Hoechst GmbH v Commission

THE COURT OF FIRST INSTANCE REDUCES THE FINE IMPOSED ON HOECHST FOR ITS PARTICIPATION IN A CARTEL ON THE SORBATES MARKET TO EUR 74.25 MILLION

The Commission erred in attributing the role of leader of the cartel to Hoechst and infringed the principles of sound administration and equal treatment

On 1 October 2003, the Commission decided that one European company (Hoechst) and four Japanese companies (Chisso, Daicel, Nippon Synthetic and Ueno) had infringed Community competition law by participating in a cartel on the sorbates market between 1978 and 1996. Sorbates are preservatives used to prevent the growth of micro-organisms such as bacteria and moulds essentially in food.

The Commission imposed fines totalling EUR 138.4 million on four of the five undertakings. A fine of EUR 99 million was imposed on the German company Hoechst. That amount reflected, amongst other things, its role as leader of the cartel (jointly with Daicel) and the fact that it was a repeat offender. Chisso was given complete immunity from any fine since it was the first undertaking to provide the Commission with decisive evidence of the existence of the cartel.

Hoechst brought an action before the Court of First Instance requesting annulment of the decision or alternatively a reduction of its fine.

The Court has rejected the application for annulment of the decision and most of Hoechst's arguments seeking a reduction of its fine. However, it holds that the Commission committed two errors which justify a reduction in the amount of the fine imposed.

First, the Court holds that the Commission failed to have regard to the principles of sound administration and equal treatment. Although the Commission clearly displayed its intention not to disclose to the cooperating undertakings, in particular to Hoechst, the fact that other undertakings had taken steps to obtain immunity from a fine, it simultaneously assured Chisso that 'fair warning' would be given to it if another company looked like overtaking it in relation to cooperation.

In light of **the importance of the observance by the Commission of the principles of sound administration and equal treatment** in administrative procedures, and in the exercise of its unlimited jurisdiction, **the Court** decides to **reduce the amount of the fine imposed on Hoechst by 10% in order to take account of the breach of those principles.**

Second, the Court holds that the Commission erred in taking Hoechst's role as a leader of the cartel into account as an aggravating circumstance, without, however, stating that circumstance sufficiently clearly and precisely in the statement of objections. In this respect, the Court notes that, although all the elements of fact on which the Commission relied in the Decision to substantiate the claim that the applicant was a leader of the cartel were already to be found in the statement of objections, those elements were set out at various points, without any link being established between them and without being characterised in any particular way by the Commission. Moreover, certain facts taken into account by the Commission did not make it possible to conclude sufficiently precisely that the role of leader would be attributed to Hoechst. It follows from that lack of precision that Hoechst was not in a position to defend itself properly.

Accordingly, **the Court** varies the Decision and **holds that it is not necessary to apply the aggravating circumstance of leader** against Hoechst and to increase the fine in that regard.

Taking into account those two errors, the Court therefore recalculates the fine imposed on Hoechst and **the final amount is reduced from EUR 99 million to EUR 74.25 million.**

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.

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

Languages available: ES DE EN EL 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=T-410/03>

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

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731