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Judgment of the Court of Justice in Case C-511/06 P

Archer Daniels Midland Co. v Commission

**THE COURT REDUCES THE FINE IMPOSED ON ARCHER DANIELS MIDLAND
FROM EUR 39.69 MILLION TO EUR 29.4 MILLION**

Archer Daniels Midland cannot be classified as a leader in the cartel on the citric acid market

By decision of 5 December 2001¹, the Commission imposed fines on five undertakings for their participation in a secret cartel on the citric acid market, namely Archer Daniels Midland ('ADM' – EUR 39.69 million), Cerestar Bioproducts (EUR 170 000), Hoffmann-La Roche (EUR 63.5 million), Haarmann & Reimer (EUR 14.22 million) and Jungbunzlauer (EUR 17.64 million).

The Commission alleged anticompetitive conduct by four of those undertakings, including ADM, from March 1991 until May 1995, and, in the case of Cerestar, from May 1992 until May 1995. The Commission complained, in particular, that they had allocated specific sales quotas in respect of each undertaking and had adhered to those quotas, had fixed target and/or floor prices, eliminated discounts and exchanged specific customer information.

ADM brought an action before the Court of First Instance for the annulment of the Commission's decision and a reduction of the fine. Since, in its judgment of 27 September 2006², the Court of First Instance dismissed ADM's action in part, ADM lodged an appeal before the Court of Justice.

The Court recalls that the Commission, when calculating the amount of the fine, classified ADM as a leader of the cartel. Leadership constitutes an aggravating circumstance which leads to a significant increase in the basic amount of the fine. Similarly, such a classification automatically excludes the granting of a very substantial reduction of the fine, even if an undertaking classified as a leader fulfils all the conditions to qualify for such a reduction.

In order to classify ADM as a leader of the cartel, the Commission relied on items of evidence contained in two documents annexed to the statement of objections. The Court finds that those items were not referred to expressly in the wording itself of that statement, thereby preventing ADM from having an opportunity to exercise its rights of defence. **The Court therefore sets**

¹ Commission Decision 2002/742/EC of 5 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.604 – Citric acid) (OJ 2002 L 239, p. 18).

² Case T-59/02 *Archer Daniels Midland v Commission* [2006] ECR II-3627.

aside the judgment of the Court of First Instance inasmuch as it rejects the plea of Archer Daniels Midland Co. relating to the infringement of its rights of defence during the administrative procedure. Moreover, the Court holds that, since the appellant was not classified lawfully as a leader of the cartel, the Court of First Instance could not, without erring in law, rule out the application of the Leniency Notice on the grounds that ADM had had a leadership role in the cartel.

Having set aside the judgment of the Court of First Instance on those grounds, the Court none the less considers itself able to give final judgment on the dispute. In this respect, **the Court holds that the Commission did not adduce other relevant evidence capable of establishing ADM as a leader of the cartel.**

The Court therefore concludes that the Commission was not entitled to apply to the fine imposed on ADM an increase of 35% on account of the aggravating circumstance stemming from that classification. Consequently, **the Court reduces the fine to EUR 29.4 million.**

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Languages available: BG DE EN FR PL 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=C-511/06>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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