



Press and Information

Court of First Instance of the European Communities

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Judgments in Cases T-161/05, T-168/05, T-174/05 and T-175/05  
Hoechst GmbH, Arkema SA, Elf Aquitaine SA, Akzo Nobel NV and Others v  
Commission

## **THE COURT OF FIRST INSTANCE REDUCES BY 10% THE FINE IMPOSED ON HOECHST FOR ITS ANTI-COMPETITIVE CONDUCT ON THE MONOCHLOROACETIC ACID MARKET**

*Hoechst's fine is reduced to EUR 66.63 million because the Commission failed to take into account under its Leniency Notice that Hoechst did not dispute the facts. However, the Court upholds the fines imposed on Akzo Nobel, Elf Aquitaine and Arkema*

By decision of 19 January 2005<sup>1</sup>, the Commission imposed fines on Akzo Nobel NV and on its Dutch and Swedish subsidiaries, on Elf Aquitaine SA and on its subsidiary Arkema SA, and on Hoechst AG for their participation in a cartel on the monochloroacetic acid market. That substance is used as a chemical intermediate, in particular, in the manufacture of detergents, adhesives, textile auxiliaries and thickeners used in foods, pharmaceuticals and cosmetics.

From 1984 to 1999, the undertakings participated in a cartel to maintain market shares through a volume and customer allocation system. They also exchanged price information and reviewed the actual sales volumes, as well as price information, at regular multilateral meetings so as to monitor the implementation of the arrangements.

The Commission imposed fines totalling EUR 216.91 million on the undertakings concerned. The Akzo and Hoechst Groups were handed fines of EUR 84.38 million and 74.03 million respectively. Elf Aquitaine and Arkema were ordered jointly and severally to pay the sum of EUR 45 million. Arkema was also ordered in its own right to pay the sum of EUR 13.50 million.

**As regards Hoechst**, the Court recalls that, under the Leniency Notice<sup>2</sup>, the fine may be reduced where, after receiving a statement of objections, an undertaking cooperates inter alia by informing the Commission that it does not substantially contest the facts on which the Commission bases its allegations. In the present case, Hoechst expressly stated that it was not contesting the facts set out by the Commission. Even if that undertaking's statement did not help the Commission to clarify its participation in the cartel by providing it with evidence which it did not have, the Court considers that, in the circumstances of the present case, that statement, which is worded expressly and unequivocally, could not but facilitate the Commission's task. Consequently, **the Court has decided to apply a reduction of 10% and to reduce the fine imposed on Hoechst to EUR 66.63 million.**

**As regards Akzo Nobel, Elf Aquitaine and Arkema, the Court upholds the Commission's decision.** In particular it recalls that, where all or almost all the capital of a subsidiary is held by its parent company, the Commission is entitled to presume that the parent exercises decisive influence over the commercial policy of its subsidiary. To rebut that presumption, it is for the parent company to adduce evidence to establish that its subsidiary determines its conduct on the market independently. The Court holds that, in the cases of Akzo Nobel and Elf Aquitaine, the joint and several liability of the infringements committed by their respective subsidiaries must be imputed to them, given their failure to adduce sufficient evidence to rebut that presumption.

<sup>1</sup> Decision C(2004) 4876 final of 19 January 2005 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/E-1/37.773 – MCAA)

<sup>2</sup> Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4)

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the Court of First Instance within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the Community institutions that are contrary to Community law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the Court of First Instance. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery*

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