



Press and Information

Court of Justice of the European Union

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Judgment in Case C-413/08 P
Lafarge SA v Commission

The Court confirms the fine of €249.6 million imposed on Lafarge for its anti-competitive conduct on the plasterboard market

By decision of 27 November 2002¹, the Commission imposed fines totalling €478 million on the companies Lafarge, Gyproc, BPB and Knauf for their anti-competitive conduct on the plasterboard market. They had participated in a single, continuous infringement which was manifested, in particular, by exchanges of information on sales volumes, concerted action on price increases and meetings with a view to the sharing out or stabilisation of the plasterboard markets in Germany, the United Kingdom, France and the Benelux between 1992 and 1998.

For the purposes of calculating the amount of the fine, the Commission, in particular, applied, because of a previous infringement of the competition rules by Lafarge², an increase of 50% for repeated infringement as an aggravating circumstance.

The General Court, in its judgment of 8 July 2008³, confirmed the Commission's decision as regards Lafarge. Lafarge then brought an appeal before the Court of Justice seeking to have that judgment set aside or the fine imposed reduced.

In its judgment of today, **the Court of Justice rejects Lafarge's arguments.**

As regards, particularly, the dispute relating to the increase of the fine for repeated infringement, the Court notes, first of all, that such increases meet the imperative of punishing repeated breaches of the competition rules by the same undertaking and that there is a relevant legal basis⁴ for taking repeated infringement into consideration in calculating the fine.

The Court points out, next, that while there are no European Union rules laying down in competition law a fixed period outside which repeated infringement cannot be taken into account, European Union law does not allow the Commission to take account of it without any limitation in time. In the Court's view, any increase for repeated infringement must comply with the principle of proportionality. That principle requires that the time elapsed between the infringement in question and a previous breach of the competition rules be taken into account in assessing the undertaking's tendency to infringe those rules. For the purposes of judicial review of the Commission's measures in matters of competition law, the General Court and, where appropriate, the Court of Justice may therefore be called upon to scrutinise whether the Commission has complied with that principle when it increased, for repeated infringement, the fine imposed and whether, in particular, such increase was imposed in the light of, among other things, the time elapsed between the infringement in question and the previous breach of the competition rules.

Lafarge also submitted that the Commission could not take account of repeated infringement because the decision establishing the previous infringement had not, at that time, become

¹ Commission Decision 2005/471/EC of 27 November 2002 relating to proceedings under Article 81 of the EC Treaty (Case No COMP/E-1/37.152 - Plasterboard) (OJ 2005 L 166, p. 8).

² Commission Decision 94/815/EC of 30 November 1994 relating to a proceeding under Article 85 of the EC Treaty (Cases IV/33.126 and 33.322 - Cement)(OJ 1994 L 343 p. 1).

³ Case [T-52/03](#) Lafarge v Commission (see also Press Release [45/08](#))

⁴ Article 15(2) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87).

definitive. In that regard, Lafarge had been fined, in a Commission decision of 1994, for its participation in a cement cartel, but that decision was not confirmed by the General Court until 2000⁵, whereas the infringement on the plasterboard market had come to an end in 1998. At that date Lafarge had not been the subject of a finding of infringement which had become definitive, since the General Court had not yet ruled on the action against the 1994 decision. The Court notes in that regard that Commission decisions are presumed to be lawful until such time as they are annulled or withdrawn. Moreover, actions before the Court do not have suspensory effect. Consequently, even if a Commission decision is still subject to judicial review, it continues to have full effect, unless the General Court or the Court of Justice decides otherwise. As regards the possibility that the decision establishing a previous infringement is annulled by the Courts of the European Union after the adoption of a later decision in which the fine was increased for repeated infringement on the basis of that earlier decision, the Court makes clear that the Commission is required, in that event, to take the necessary measures to comply with the judgment of the Court. It may, thus, have to amend the later decision in so far as it includes an increase of the fine for repeated infringement even in the absence of a request to do so from the undertaking concerned.

Finally, the Court notes that the general principle that penalties must have a proper legal basis requires that the law clearly defines offences and the penalties sanctioning them. The fact that a law confers a discretion is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference. The discretion conferred on the Commission in competition matters is limited by objective criteria to which it must adhere. Thus, a prudent trader can foresee in a sufficiently precise manner the method and order of magnitude of the fines which he may incur for a given line of conduct. The fact that that trader cannot know, in advance, precisely the level of the fines which the Commission will impose in each individual case cannot constitute a breach of the principle that penalties must have a proper legal basis.

Accordingly, the Court of Justice confirms the judgment of the General Court and upholds the fine of €249.6 million imposed on Lafarge.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union 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 General Court. 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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⁵ Judgment in Joined Cases [T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95](#) Cimentries CBR and Others v Commission (see Press Release [16/00](#)).