



Press and Information

Court of Justice of the European Union

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Judgment in Case C-441/07 P  
Commission v Alrosa Company Ltd

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**The Court of Justice sets aside the judgment of the General Court and upholds the Commission's decision making binding the commitments offered by De Beers to cease all purchases of rough diamonds from Alrosa**

*In adopting the decision, the Commission did not make an error of law or a manifest error of assessment or infringe the principle of proportionality*

The Russian company Alrosa 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 \$800 million a year. Following that notification, the Commission initiated two sets of proceedings, one based on Article 81 EC (which prohibits anti-competitive agreements) and the other on Article 82 EC (which prohibits the abuse of a dominant position). The former was initiated against both companies and the latter against De Beers alone.

In December 2004 Alrosa and De Beers proposed joint commitments to the Commission providing for sales of rough diamonds by Alrosa to De Beers to be reduced progressively to \$275 million in 2010 and subsequently to be capped at that level. Those commitments were not accepted by the Commission.

On 25 January 2006 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.

On 22 February 2006 the Commission adopted a decision<sup>1</sup> making binding the individual commitments proposed by De Beers.

By judgment of 11 July 2007<sup>2</sup> the General Court annulled the Commission's decision, on application by Alrosa, on the ground that the Commission had not complied with the principle of proportionality and had not respected Alrosa's right to be heard on the individual commitments offered by De Beers. The General Court considered that the Commission had been required to examine the proportionality of the new commitments offered by De Beers. It took the view in the present case that the complete prohibition of all commercial relations between the two parties with effect from 2009 was manifestly disproportionate.

The Commission appealed to the Court of Justice against the judgment of the General Court, arguing that it infringed the principle of proportionality, encroached on the Commission's discretion in connection with the acceptance of commitments, and disregarded the extent of Alrosa's right to be heard.

The Court of Justice starts by recalling that the Commission's obligation to ensure that the principle of proportionality is observed has a different extent and content, depending on whether it is

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

<sup>2</sup> Case [T-170/06](#) Alrosa Company Ltd v Commission (see also press release [46/07](#)).

considered in relation to the imposition of remedies by the Commission or the acceptance by the Commission of commitments given by the undertakings concerned.

The Court finds that the General Court was wrong to consider that the principle of proportionality must be applied in the same way in both procedures.

Those two procedures pursue two different objectives, one of them aiming to put an end to the infringement that has been found to exist and the other aiming to address the Commission's concerns following its preliminary assessment, the Commission not being required to make a finding of an infringement.

The Court states that, in connection with the acceptance of commitments given by undertakings, compliance with the principle of proportionality requires the Commission only to ascertain that those commitments address the problems it has identified and expressed to the undertakings. The Commission is not obliged to compare the commitments offered by an undertaking with the measures it would itself have imposed and to regard as disproportionate any commitment which goes beyond those measures. Undertakings which offer commitments consciously accept that the concessions they make may go beyond what the Commission could itself impose on them in a decision adopted by it.

Next, the Court considers that the General Court infringed the discretion enjoyed by the Commission in connection with the acceptance of commitments.

In the Court's view, the General Court expressed its own differing assessment of the capability of the joint commitments to eliminate the competition problems identified by the Commission, before concluding that alternative solutions existed that were less onerous than a complete ban on dealings. By putting forward its own assessment of complex economic circumstances and substituting its own assessment for that of the Commission, the General Court encroached on the discretion enjoyed by the Commission instead of reviewing the lawfulness of its assessment.

Finally, the Court considers that the General Court misinterpreted the extent of Alrosa's right to be heard.

The Court points out that two sets of proceedings were started by the Commission, one under Article 81 EC and the other under Article 82 EC. It follows that Alrosa could have had the status of 'undertaking concerned' only in the context of the proceedings brought under Article 81 EC. With regard to the proceedings under Article 82 EC, only De Beers as the presumed dominant undertaking could be the addressee of the statement of objections and the Commission's final decision in those proceedings. In that case, Alrosa's rights were limited to those of an interested third party.

### **The Court consequently sets aside the judgment of the General Court.**

The Court then considers that it is in a position itself to give final judgment in the matter. **It considers that Alrosa's argument that its right to be heard was not observed cannot succeed, in view of its status of interested third party.**

Moreover, the Court concludes that **the Commission did not make an error of law or a manifest error of assessment or breach the principle of proportionality** in adopting its decision. Alrosa has not shown that the individual commitments offered by De Beers and made binding by the Commission manifestly went beyond what was necessary to address the concerns expressed by the Commission in its preliminary assessment.

**The Court therefore dismisses Alrosa's application and upholds the Commission's decision.**

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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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