



Press and Information

Court of Justice of the European Union

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Judgment in Case C-407/08 P
Knauf Gips KG v Commission

The Court confirms the fine of €5.8 million imposed on Knauf Gips KG for its anti-competitive conduct on the plasterboard market

The undertaking is solely liable for the infringements committed by the companies constituting the Knauf Group

By Decision of 27 November 2002¹, the Commission imposed fines totalling €478 million on the undertakings Lafarge, Gyproc, BPB and Knauf Gips KG 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.

The General Court, in its judgment of 8 July 2008² confirmed, as regards Knauf Gips KG, the Commission's decision and the fine of €5.8 million imposed on it. The undertaking then brought an appeal before the Court of Justice seeking to have that judgment set aside or the fine imposed reduced.

The Knauf Group is composed, in particular, of Knauf Gips KG and Gebrüder Knauf Verwaltungsgesellschaft KG ('GKV') which owns, directly or indirectly, ten or a dozen companies which operate on the plasterboard market.

Among the arguments deployed before the Court, Knauf Gips KG submits that GKV and its subsidiaries, on the one hand, and itself, on the other, do not constitute an economic unit in the competition law sense. Knauf Gips also challenges the fact that it was held liable for the actions of the Knauf Group.

First of all, the Court points out that the concept of an 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The concept of an undertaking must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal. The existence of an economic unit may thus be inferred from a body of consistent evidence, even if some of that evidence, taken in isolation, is insufficient to establish the existence of such a unit.

The Court, having analysed all that evidence, **concludes that the companies belonging to the Knauf family constitute an economic unit.**

As regards the role of Knauf Gips KG within the Knauf Group, the General Court found that it presented itself, during the administrative procedure as sole interlocutor with the Commission and did not challenge that capacity at any time during that procedure. In the General Court's view, the onus was on Knauf Gips KG to react during the administrative procedure, or be faced with the prospect of no longer being able to do so before the Courts of the Union, by demonstrating that, despite the factors relied on by the Commission, it could not be held liable for the infringement committed by the companies in the Knauf Group.

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 Case [T-52/03 Knauf Gips v Commission](#). (see also Press Release [45/08](#))

On that point, the Court considers that there is no requirement under the law of the Union that the addressee of the statement of objections must react during the administrative procedure or be barred from doing so later at the stage of judicial proceedings. Although an undertaking's express or implicit acknowledgement of matters of fact or of law during the administrative procedure before the Commission may constitute additional evidence when determining whether an action is well founded, it cannot restrict the actual exercise of the right to bring proceedings before the General Court.

Consequently, the Court decides that **the General Court erred in law in holding that the onus was on Knauf Gips KG to react during the administrative procedure, or be faced with the prospect of no longer being able to do so before the Courts of the Union.**

Therefore, **the Court sets aside the General Court's judgment** insofar as it held that Knauf Gips KG was solely liable for the action of the Knauf Group in connection with the infringement.

Then, giving final judgment in the matter itself, the Court holds, on the basis of the body of evidence, that GKV does not determine its conduct on the market independently, but is dependent in that regard on Knauf Gips KG. The fact that there is no single legal person at the apex of the Knauf Group is no obstacle to Knauf Gips KG being held liable for the actions of that group.

Indeed, the legal structure particular to a group of companies, which is characterised by the absence of a single legal person at the apex of that group, is not decisive where that structure does not reflect the effective functioning and actual organisation of the group.

Consequently, the lack of subordinating legal links between Knauf Gips KG and GKV cannot cast any doubt on the conclusion that the former of those two companies must be held liable for the activities of the Knauf Group, since it is established that, in reality, GKV does not determine its conduct on the plasterboard market independently.

The Court decides that the Commission made no error of assessment in holding that Knauf Gips KG should be considered to be responsible for all the activities of the Knauf Group.

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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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