General Court of the European Union
PRESS RELEASE No 86/10
Luxembourg, 13 September 2010

Judgment in Cases T-26/06 and T-40/06
Trioplast Wittenheim SA v Commission
Trioplast Industrier AB v Commission

Press and Information

The Court annuls in part the Commission's decision relating to a cartel on the market for industrial sacks

The rules applicable to joint and several liability of successive parent companies for the payment of a fine imposed on their subsidiary are clarified

Trioplast Industrier is a Swedish undertaking and the parent company of the Trioplast Group, which also includes Trioplast Wittenheim, a company governed by French law which, prior to its bankruptcy in 2006, produced industrial sacks, films and FFS Film. Trioplast Industrier acquired its French subsidiary from the Danish company FLS Plast in January 1999.

In November 2005, the Commission found that, between January 1982 and June 2002, there had been a cartel on the market for plastic industrial sacks used to package upstream products, including raw materials, fertilisers, polymers, construction materials, agricultural and horticultural products and animal feed. The cartel targeted the Belgian, German, Spanish, French, Luxembourg and Netherlands markets for those products and consisted inter alia in the concerted fixing of prices and sales quotas and the allocation of tender contracts.

The Commission imposed a fine of €17.85 on Trioplast Wittenheim for its participation in the cartel. Moreover, of that amount, the Commission held Trioplast Industrier jointly and severally liable for €7.73 million and FLS Plast and its parent company FLSmidth jointly and severally liable for €15.30 million.

Trioplast Wittenheim and Trioplast Industrier challenged the Commission's decision before the General Court.

In its two judgments delivered today, the Court, first of all, upholds the Commission's decision in respect of Trioplast Wittenheim. The Court states, inter alia, that in determining the amount of the fine the Commission was correct in taking 1996 as the reference year for assessing the seriousness of the infringement. As Trioplast Wittenheim reduced its activities significantly after 1997, its market share in 1996 reflected better its position in the market for industrial sacks throughout the infringement period and in relation to other direct participants in the cartel than did its position in 2001, which was the last complete year of the infringement.

The Court does not, however, accept 1996 as the reference year for Trioplast Industrier, as it was not yet present at that time on the market for industrial sacks. Moreover, since Trioplast Wittenheim's market share decreased significantly after 1996, that year is not indicative of the scope of the infringement which can be attributed to its new parent company, which acquired it only in January 1999. Accordingly, **the Court annuls the contested decision in so far as the fine imposed on Trioplast Industrier was based on its subsidiary's market share in 1996**.

Next, the Court dismisses the two companies' argument that the combined amounts imposed on Trioplast Industrier, on the one hand, and on FLS Plast and FLSmidth, on the other, which exceed the amount imposed on their subsidiary Trioplast Wittenheim, is the result of an unlawful calculation method. The Court states in that regard that in the case of an infringement committed by a subsidiary having belonged to a series of successive parent companies during the infringement, such an excess amount is not inappropriate per se.

The Court does hold, however, that the contested decision confers complete freedom on the Commission for attributing joint and several liability to the various successive parent companies, with the result that **the actual amount recovered from Trioplast Industrier may be contingent on the amount recovered from FLS Plast and FLSmidth**. Trioplast Industrier is thus unable to know the exact amount of the fine it must pay.

The Court states in that regard that, since the successive parent companies have never formed an economic entity together, **the actual amount paid by Trioplast Industrier must not under any circumstances exceed the share of its joint and several liability**. That share corresponds to the relative portion of the amount attributed to Trioplast Industrier in relation to the total of the amounts up to which the successive parent companies have, respectively, been held jointly and severally liable for the payment of the fine imposed on Trioplast Wittenheim.

Since the Commission failed to specify that share, the Court annuls the Commission's decision on that point as well.

Lastly, the Court fixes at €2.73 million the amount imposed on Trioplast Industrier. That amount is the basis on which the Commission must determine Trioplast Industrier's share of the joint and several liability of the successive parent companies for the payment of the fine imposed on Trioplast Wittenheim.

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

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.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355