



Press and Information

General Court of the European Union

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Judgments in Case T-299/08 & T-343/08  
Elf Aquitaine v Commission and Case T-343/08 Arkema France v  
Commission

## **The General Court upholds the fine of EUR 59 million imposed on Elf Aquitaine and Arkema France for their participation in a cartel on the sodium chlorate market**

By decision of 11 June 2008<sup>1</sup>, the Commission fined a number of companies, including Arkema France and its parent company at the time of the facts, Elf Aquitaine, for their anti-competitive conduct on the market for sodium chlorate, a product used for bleaching paper. The cartel primarily consisted in the allocation of sales volumes, price fixing and the exchange of commercially sensitive information during the period from 17 May 1995 to 9 February 2000.

In that decision, Elf Aquitaine and Arkema France were fined as follows:

- Arkema France and Elf Aquitaine: €22.7 million to be paid joint and severally;
- Arkema France: €20.43 million (for repeated infringement);
- Elf Aquitaine: €15.89 million (for deterrence).

By today's judgments, the General Court dismisses the actions brought by Arkema France and Elf Aquitaine for annulment of the Commission's decision and for a reduction of the fines imposed on them.

First of all, the Court notes that, in accordance with settled case-law, there is a rebuttable presumption that a subsidiary which is wholly owned by its parent company does not freely determine its own conduct on the market. According to the Court, such a presumption also applies where a parent company owns almost all of the share capital of its subsidiary. Therefore, the Court considers that, in so far as Elf Aquitaine held more than 97% of the shares in Arkema France and did not furnish evidence capable of rebutting the presumption that it exercised decisive influence over its subsidiary, the Commission did not commit an error in deciding to impute Arkema France's unlawful conduct to it.

In addition, the Court considers that the Commission has the power, but is not obliged, to impute the responsibility for an infringement committed by a subsidiary to its parent company. Consequently, the fact that, in an earlier decision, the Commission did not impute to Elf Aquitaine the unlawful conduct of its subsidiary did not prevent it from doing so in the decision in question.

As regards the fines imposed on Elf Aquitaine, the Court considers that it was legitimate for the Commission to increase the basic amount of the fine by 70% for deterrence only in respect of that company, given its particularly high turnover which makes it easier for it to mobilise the funds necessary to pay the fine. The Court finds that, in that regard, the Commission did not misuse its powers or infringe the principles of legal certainty, the autonomy of legal persons, or lawfulness and equal treatment.

As regards the 90% increase of the basic amount of the fine imposed on Arkema France for repeated infringement, the Court finds that the Commission correctly relied on three earlier

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<sup>1</sup> Commission Decision C( 2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the Agreement on the European Economic Area (EEA) (Case COMP/38.695 – Sodium chlorate).

decisions<sup>2</sup>. In the Court's view, that series of three decisions, which were adopted in quick succession (in 1984, 1986 and 1994) and before the implementation of the cartel at issue began in 1995, is evidence of Arkema France's tendency to infringe the competition rules and not to draw the appropriate conclusions from previous penalties.

Moreover, the fact that, in earlier decisions, the Commission increased the fine imposed on it by 50% for repeated infringement cannot prevent the Commission from being able to increase that level if that is necessary to ensure that competition policy is implemented. The effective application of the competition rules requires, on the contrary, that the Commission be able to adapt the level of fines to the needs of that policy at any time. In that regard, the Court considers that the 90% increase of the basic amount of the fine for repeated infringement does not infringe the principles of proportionality, equal treatment and good administration.

Furthermore, the Court considers that the Commission did not commit an error in considering that Arkema France's cooperation in the administrative procedure did not justify granting it a reduction of its fine. First, after examining in detail the information provided by Arkema France to the Commission, the Court takes the view that, as the Commission found, that information was not of significant added value for the purposes of the 2002 Leniency Notice<sup>3</sup>. Second, the Court concludes that Arkema France was not entitled to obtain a reduction of the fine outside of the scope of the 2002 Leniency Notice since it did not establish that, without its cooperation, the Commission would not have been able in the present case to impose penalties in full or in part on the cartel at issue.

The Court also rejects all of the other arguments raised by the parties.

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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 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.

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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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<sup>2</sup> Commission Decision 85/74/EEC of 23 November 1984 relating to a proceeding under Article [81] of the EEC Treaty (IV/30.907 - Peroxygen products); Commission Decision 86/398/EEC of 23 April 1986 relating to a proceeding under Article [81] of the EEC Treaty (IV/31.149 - Polypropylene); Commission Decision 94/599/EC of 27 July 1994 relating to a proceeding under Article [81] of the EC Treaty (IV/31.865 – PVC).

<sup>3</sup> Commission Notice of 19 February 2002 on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3). That notice essentially provides for the grant of a total or partial reduction of a fine where an undertaking which cooperates with the Commission meets certain conditions, in particular by providing the Commission with information which it did not previously have at its disposal, thereby enabling it to establish the infringement.