



General Court of the European Union

PRESS RELEASE No 61/11

Luxembourg, 16 June 2011

Judgments in Cases T-185/06 L'Air liquide SA, T-186/06 Solvay SA, T-191/06 FMC Foret SA, T-192/06 Caffaro Srl, T-194/06 SNIA SpA, T-195/06 Solvay Solexis SpA, T-196/06 Edison SpA, & T-197/06 FMC Corp. v Commission

Press and Information

The General Court annuls the Commission's decision relating to the hydrogen peroxide and sodium perborate cartel in so far as it concerns L'Air liquide and Edison

Furthermore, Solvay's fine, which was initially €167.06 million, is reduced to €139.50 million

By decision of 3 May 2006¹, the Commission imposed fines totalling €388.13 million on a number of companies for their participation in a cartel on the market for hydrogen peroxide and sodium perborate (bleaching agents). Amongst the companies penalised were Edison and its subsidiary at the material time (Ausimont SpA, now called Solvay Solexis), Solvay, FMC and its subsidiary (FMC Foret), as well as SNIA and its subsidiary (Caffaro). L'Air liquide's participation in the cartel had ended more than five years prior to the Commission's first investigative measures. Consequently, because the limitation period had expired, it was not fined, but was however included among the addressees of the Decision.

The cartel, which lasted from 31 January 1994 until 31 December 2000, consisted mainly of competitors exchanging commercially important and confidential market and company information, limiting and controlling production, allocating market shares and customers and fixing and monitoring prices.

The companies concerned brought actions before the Court for annulment of the Commission's decision or for a reduction in their respective fines.

The Court **has decided to annul the decision with respect to L'Air liquide and Edison**, in so far as the Commission failed to adopt a detailed position on the evidence which those companies adduced in order to rebut the presumption that they exercised a decisive influence over the conduct of their subsidiaries, which were wholly owned by them. The Court points out that the Commission's obligation to provide a statement of reasons for its decision on that point stems from the rebuttable nature of that presumption, the rebuttal of which required the parent companies to adduce evidence relating to all the economic, organisational and legal links between themselves and their respective subsidiaries.

Consequently, the Commission's decision is annulled in so far as it concerns those two companies, thus resulting in particular in the annulment of the fine of €58.13 million imposed on Edison. In the case of L'Air liquide, which did not receive a financial penalty, the decision of the Court has the effect of setting aside the finding of its participation in the infringement.

As regards Solvay, the Court holds that the Commission erred in its assessment of the facts with respect to the period during which the undertaking participated in the infringement. The Commission found that that period lasted from 31 January 1994 until 31 December 2000. The Court takes the view that the evidence at the Commission's disposal does not constitute a body of evidence sufficient to warrant its finding that Solvay participated in the infringement during the period from 31 January 1994 until May 1995. Consequently, the Court has decided to reduce the

¹ Commission Decision C(2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.620 – Hydrogen peroxide and perborate) (OJ 2006 L 353, p. 54).

fine imposed on Solvay, so as to take account of the reduced period of its participation in the cartel.

Moreover, the Court rejects Solvay's argument that its leniency application² had to be regarded as having been lodged at the time when it contacted the Commission by telephone and requested a meeting to make an oral statement. The Court points out that, in order to qualify for a reduction in the fine, an undertaking must provide evidence which represents significant added value with respect to the evidence which was already in the Commission's possession. Thus, by deciding to disclose information orally, an undertaking must take account of the risk that another member of the cartel may disclose to the Commission, in writing and before it, such evidence.

Furthermore, the Court points out that Solvay received a 10% reduction in its fine because of its cooperation with the Commission during the investigation. However, the Court states that the Commission was wrong to find that the evidence provided by Solvay had basically corroborated certain information already provided by two other undertakings which were members of the cartel. The Court considers in particular that the information provided by Solvay was widely used in the Commission's decision and that Solvay was the first to submit evidence with respect to certain unlawful conduct which enabled the Commission to establish certain key aspects of the cartel in question. Thus, the Court has decided to reduce Solvay's fine by 20% on the basis of its cooperation.

Consequently, the Court has reduced **Solvay's fine, which was initially €167.06 million, to €139.50 million.**

The Court rejects all the arguments of the other undertakings concerned and has decided to maintain the amount of the fines imposed on them.

Companies	Fines imposed by the Commission	Decision of the General Court
L'Air Liquide SA (France)	0	Annulment of the Commission's decision with respect to L'Air liquide SA
Solvay SA (Belgium)	€167.06 million	Reduction of the fine to €139.50 million
Edison SpA and Solvay Solexis SpA (formerly Ausimont) (Italy)	Edison SpA – €58.13 million, of which €25.62 million jointly and severally with Solvay Solexis SpA	Annulment of the Commission's decision with respect to Edison SpA and dismissal of the action brought by Solvay Solexis SpA
Caffaro Srl and SNIA SpA (Italy)	jointly and severally: €1.08 million	Dismissal of the actions
FMC Foret SA (Spain) and FMC Corporation (United States)	jointly and severally: € 25 million	Dismissal of the actions

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.

Unofficial document for media use, not binding on the General Court.

² Pursuant to the Commission Notice of 19 February 2002 on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

The full text of the judgments ([T-185/06](#), [T-186/06](#), [T-191/06](#), [T-192/06](#), [T-194/06](#), [T-195/06](#), [T-196/06](#), & [T-197/06](#)) is published on the CURIA website on the day of delivery

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