



General Court of the European Union

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Judgments in Cases T-235/07 Bavaria NV v Commission and T-240/07 Heineken Nederland BV and Heineken NV v Commission

Press and Information

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**The General Court reduces the fines imposed on Heineken NV, its subsidiary Heineken Nederland BV, and Bavaria NV for their participation in a cartel on the Dutch beer market**

*The fine on Heineken NV and its subsidiary is reduced from €219.28 million to €198 million and that on Bavaria NV from €22.85 million to €20.71 million*

By decision of 18 April 2007<sup>1</sup> the Commission imposed fines totalling more than €273 million on several Dutch brewers, including Heineken NV and its subsidiary – Heineken Nederland BV – and Bavaria NV<sup>2</sup>, for their participation in a cartel on the Dutch beer market from 27 February 1996 to 3 November 1999.

On that market the brewers sell their beer to end consumers mainly through two distribution channels: the “on-trade” segment (hotels, restaurants and cafés), where consumption is on the premises, and the “off-trade” segment (supermarkets and off-licences), where the beer is intended for consumption at home.

The infringement found by the Commission consisted of the coordination of prices and price increases for beer and the allocation of customers, both in the on-trade segment and in the off-trade segment in the Netherlands, and the occasional coordination of other commercial conditions offered to individual on-trade customers in the Netherlands.

The Commission imposed a fine of €219.28 million on Heineken NV jointly and severally with its subsidiary and a fine of €22.85 million on Bavaria NV.

The companies concerned subsequently brought actions before the General Court seeking annulment of the Commission’s decision or a reduction in their fines.

The Court considers that the Commission has not proved that the infringement concerned the occasional coordination of commercial conditions, other than prices, offered to individual customers in the on-trade segment. The Commission had relied on some handwritten notes in concluding that the undertakings had coordinated certain commercial conditions, such as those for loans in that market segment. The Court finds that the references in those notes are sporadic and brief, that the companies have put forward a plausible alternative explanation, and that there is no other specific evidence. Consequently, the Court annuls the Commission’s decision on that point and reduces the fines on Heineken NV, its subsidiary and Bavaria NV.

On the other hand, the Court rejects the companies’ arguments concerning the other aspects of the infringement.

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<sup>1</sup> Commission Decision C(2007) 1697 of 18 April 2007 relating to a proceeding under Article 81 [EC] (Case Comp/B/37.766 – Dutch beer market) (OJ 2008 C 122, p. 1).

<sup>2</sup> According to the Commission, the Grolsch group also participated in the cartel and was fined €31.66 million. The InBev group was granted immunity under the Commission’s leniency programme as it had supplied decisive information concerning the infringement.

The Commission had reduced the fine on each undertaking by €100 000, as it accepted that the length of the administrative procedure in the present case, which had continued for more than 7 years after its inspections, had been unreasonable.

The Court finds that the length of the administrative procedure infringed the principle that proceedings must be completed within a reasonable period. It finds that the flat-rate reduction given by the Commission does not take account of the amount of the fines and does not therefore constitute a reduction in the fine that is capable of adequately redressing the infringement resulting from the excessive period taken. Consequently, the Court considers that, in order to give the companies just satisfaction for the excessive duration of the procedure, the reduction should be increased to 5% of the fine.

**The General Court rejects all the other arguments put forward by the companies. The fine imposed jointly and severally on Heineken NV and its subsidiary is set at €198 million and that on Bavaria NV at €20.71 million.**

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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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