



General Court of the European Union

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Judgments in Cases T-51/06 Fardem Packaging, T-54/06 Kendrion, Joined Cases T-55/06 RKW and T-66/06 JM Gesellschaft für industrielle Beteiligungen, Cases T-59/06 Low & Bonar and Bonar Technical Fabrics, T-68/06 Stempher and Koninklijke Verpakingsindustrie Stempher, T-72/06 Groupe Gascogne, T-76/06 Plásticos Españoles (ASPLA), T-78/06 Álvarez, T-79/06 Sachsa Verpackung v Commission

Press and Information

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## **The Court annuls the Commission's decision in so far as it imposes a fine of €2.37 million on Stempher for its anti-competitive conduct on the plastic industrial bags market**

*The Court also reduces the initial €12.24 million fine imposed jointly and severally on Low & Bonar and Bonar Technical Fabrics to €9.18 million and dismisses the actions brought by the other undertakings*

By decision of 30 November 2005<sup>1</sup>, the Commission imposed fines totalling more than €290 million on a number of undertakings for their participation in a cartel on the plastic industrial bags market. The infringement identified by the Commission mainly concerned the fixing of prices and the establishment of common price calculation models, the sharing of markets, the allocation of sales quotas, the assignment of customers, deals and orders and lastly the exchange of individualised information in Belgium, Germany, Spain, France, Luxembourg and the Netherlands.

Certain undertakings<sup>2</sup> brought actions before the Court seeking annulment of the Commission's decision or a reduction in the fines imposed on them.

As regards the parent company **Low & Bonar** and its subsidiary **Bonar Technical Fabrics** (a former subsidiary of one of Bonar Phormium NV's divisions, namely Bonar Phormium Packaging – BPP), the Commission had found the period of infringement to be the period between 13 September 1991 and 28 November 1997. However, the Court considers that the Commission has not established that BPP participated in a single and continuous infringement before 21 November 1997 since it has not proved that BPP knew or should have known that, by participating in certain earlier meetings, it was joining in a wider cartel extending over a number of European countries. Consequently, the Court decides to grant a reduction of 25% of the starting amount of the fine. Thus, **the initial amount of the fine (€12.24 million) is reduced to €9.18 million.**

As regards **Stempher BV** and the limited partnership **Koninklijke Verpakingsindustrie Stempher CV** (which form the undertaking Stempher), the Court decides that the Commission did not produce sufficiently precise and consistent evidence to establish that Stempher continued to participate in the cartel after 20 June 1997. The rule concerning the five-year limitation period thus precludes the Commission from fining Stempher. As the Commission has failed to show, either in its 2005 decision or in the course of proceedings before the Court, a legitimate interest in a finding being made that Stempher committed an infringement before 20 June 1997, **the Court decides to**

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<sup>1</sup> Commission Decision C (2005) 4634 final of 30 November 2005 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.354 – Industrial bags) (OJ 2007 L 282, p. 41).

<sup>2</sup> By a judgment of 13 September 2010, the Court dismissed the action brought by Trioplast Wittenheim SA (France) ([T-26/06](#)). By another judgment delivered on the same day, the Court decided to annul the Commission's decision in so far as it concerned Trioplast Industrier (Sweden) ([T-40/06](#)) and to reduce the fine imposed on that company. The actions brought by UPM-Kymmene Oyj (Finland) ([T-53/06](#)), FLS Plast (Denmark) ([T-64/06](#)) and FLSmidth (Denmark) ([T-65/06](#)) are currently being considered by the Court.

**annul the Commission's decision in so far as it imposes a fine of €2.37 million on Stempher BV and Koninklijke Verpakingsindustrie Stempher CV.**

Lastly, **the Court rejects all the arguments advanced by the other undertakings** and decides, as a consequence, to uphold the fines imposed on them.

<b>Cases</b>	<b>Undertakings</b>	<b>Fines imposed by the Commission</b>	<b>Decision of the General Court</b>
T-51/06	Fardem Packaging BV (Netherlands)	Jointly and severally with Kendrion NV (Netherlands): €2.20 million of the €34 million imposed on Kendrion	Action dismissed: fine upheld
T-54/06	Kendrion NV (Netherlands)	€34 million, of which amount €2.20 million jointly and severally with Fardem Packaging BV (Netherlands)	Action dismissed: fine upheld
Joined Cases T-55/06 and T-66/06	RKW SE (Germany) and JM Gesellschaft für industrielle Beteiligungen mbH & Co. KGaA (Germany)	Jointly and severally: €39 million	Action dismissed: fine upheld
T-59/06	Low & Bonar plc. (United Kingdom) and Bonar Technical Fabrics NV (Belgium)	Jointly and severally: €12.24 million	Fine reduced to €9.18 million
T-68/06	Stempher BV (Netherlands) and Koninklijke Verpakingsindustrie Stempher CV (Netherlands)	Jointly and severally: €2.37 million	Annulment of the Commission's decision so far as it concerns the two undertakings
T-72/06	Groupe Gascogne SA (France)	Jointly and severally with Sachsa Verpackung GmbH (Germany): €9.9 million of the €13.2 million imposed on Sachsa	Action dismissed: fine upheld
T-76/06	Plásticos Españoles SA (ASPLA) (Spain)	Jointly and severally with Armando Álvarez SA (Spain): €42 million	Action dismissed: fine upheld
T-78/06	Armando Álvarez SA (Spain)	Jointly and severally with Plásticos Españoles SA (ASPLA) (Spain):	Action dismissed: fine upheld

		€42 million	
T-79/06	Sachsa Verpackung GmbH (Germany)	€13.2 million, of which amount €9.9 million jointly and severally with Groupe Gascogne (France)	Action dismissed: fine upheld

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

*The full text of the judgments ([T-51/06](#), [T-54/06](#), [T-55/06](#) & [T-66/06](#), [T-59/06](#), [T-68/06](#), [T-72/06](#), [T-76/06](#), [T-78/06](#) & [T-79/06](#)) is published on the CURIA website on the day of delivery*

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