



Press and Information

Court of Justice of the European Union

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Judgments in Case C-445/11 P
Bavaria NV v Commission and Case C-452/11 P Heineken Nederland BV
and Others v Commission

The Court of Justice confirms the fines of €198 million and of €20.71 million imposed respectively on Heineken and on Bavaria NV for their participation in a cartel on the Dutch beer market

By decision of 18 April 2007¹ 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, 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) 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.

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

By judgments of June 2011², the General Court considered, first of all, that Commission had not proved that the infringement concerned the occasional coordination of commercial conditions, other than prices, offered to individual customers in the on-trade segment. Second, as regards the fines, the General Court held that in order to give the companies just satisfaction for the excessive duration of the procedure, the reduction of the fine already imposed by the Commission should be increased to 5%.

Consequently, the fine imposed jointly and severally on Heineken NV and its subsidiary was set at €198 million. That imposed on Bavaria NV was set at €20.71 million

The companies brought appeals before the **Court of Justice** which, by its judgments of today, **rejects all pleas put forward**.

In particular, the Court of Justice considers that the General Court did not infringe the principle of equal treatment by concluding that the circumstances which were the subject of the Commission's decision concerning that cartel could not be compared to those of a previous Commission decision relating to the Belgian beer sector. A direct comparison of the fines imposed on the addressees of

¹ 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).

² Case [T-240/07](#), *Heineken Nederland BV and Heineken v Commission* and Case [T-235/07](#) *Bavaria BV v Commission*. See also Press Release No [62/11](#).

the two decisions concerning distinct infringements would be likely to distort the specific functions performed by the different stages in the calculation of a fine, in so far as the final amounts of the fines reflect the specific circumstances of each cartel.

The Court of Justice also holds that the right to good administration and the rights of the defence of those companies have not been infringed by the refusal to grant them access to the information in the Statement of Objections provided by another party to the proceedings.

Lastly, the Court of Justice rejects the argument, advanced by Heineken, that the General Court, before ruling on the present cases, should have first ruled on another case related to same cartel³, in which the General Court held that the brewer, Koninklijke Grolsch, had not participated in the cartel at issue. In this regard, the Court of Justice notes that the fact that the infringement could not be attributed to Koninklijke Grolsch, but should have been attributed to its subsidiary (namely Grolsche Bierbrouwerij Nederland BV), is irrelevant as regards the infringement committed by Heineken.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The full text of the judgments ([C-445/11 P](#) & [C-452/11 P](#)) is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

³ Case [T-234/07](#) *Koninklijke Grolsch v Commission*. See also Press Release No [93/11](#).