



Press and Information

Court of Justice of the European Union

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Judgment in Case C-508/11 P
Eni SpA v Commission

The Court upholds the judgment of the General Court concerning the cartel on the synthetic rubbers markets as regards the Italian company Eni SpA

Eni is definitively required to pay a fine of €181.5 million

In 2006¹ the Commission imposed fines totalling over €519 million on 13 companies² for having participated, at different times between 20 May 1996 and 28 November 2002, in a cartel on the market in butadiene rubber (BR) and emulsion styrene-butadiene rubber (ESBR). These are synthetic rubbers used in the manufacture of tyres and different types of consumer goods, such as certain floor coverings and golf balls.

The inquiry into that cartel had been set in motion by requests for clemency from Bayer in 2002. The infringement consisted in fixing price targets, sharing customers by non-aggression agreements and exchanging sensitive information on prices, competitors and customers.

In particular, as regards the Italian company Eni SpA and its subsidiary Polimeri Europa SpA (wholly owned and now Versalis SpA), the Commission increased the basic fine by 50% for repeated infringements, because of their participation in two previous cartels³, to a total of €272.25 million.

The companies concerned brought an action before the General Court in 2007 seeking the annulment of the Commission's decision or a reduction in their respective fines. By its judgments, delivered in 2011⁴, the General Court annulled the decision in so far as it concerned Unipetrol, its subsidiary Kaučuk and Trade Stomil.

As regards Eni and its subsidiary, Polimeri Europa, the General Court considered that the development of the structure and control of the companies involved was particularly complex and that the Commission had not proved that the same undertakings had repeated an infringement. It therefore reduced the fine imposed jointly and severally on them to €181.5 million. In the present case, Eni has appealed to the Court of Justice to have the judgment of the General Court set aside⁵.

¹ Commission Decision C (2006) 5700 final of 29 November 2006 relating to a proceeding under Articles 81 EC and 53 of the EEA Agreement (Case COMP/F/38.638 – butadiene rubber and emulsion styrene-butadiene rubber).

² Those companies are Eni SpA, Versalis SpA, Bayer AG, The Dow Chemical Company, Dow Deutschland Inc., Dow Deutschland Anlagengesellschaft mbH, Dow Europe, Shell Petroleum NV, Shell Nederland BV, Shell Nederland Chemie BV, Unipetrol a.s., Kaučuk a.s. and Trade Stomil sp. z o.o.

³ The 'Polypropylene decision' (Commission Decision 86/398/EEC of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.149 - Polypropylene) (OJ 1986 L 230, p. 1)) and the 'PVC II' decision (Commission Decision 94/599/EC of 27 July 1994 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/31.865 - PVC) (OJ 1994 L 239, p. 14).

⁴ Cases [T-38/07](#) Shell Petroleum NV and Others v Commission, [T-39/07](#) Eni SpA v Commission, [T-42/07](#) The Dow Chemical Company and Others v Commission, [T-44/07](#) Unipetrol a.s. v Commission, [T-45/07](#) Kaučuk a.s. v Commission, [T-53/07](#) Trade Stomil sp. z o.o. v Commission and [T-59/07](#) Polimeri Europa SpA v Commission; see also PR No [71/11](#)).

⁵ Case [C-499/11 P](#) Dow Chemical and Others v Commission, against the judgment in T-42/07, and Case [C-511/11 P](#) Versalis (formerly Polimeri Europa) v Commission, against the judgment in T-59/07, are presently pending before the Court of Justice.

In support of its appeal, Eni submits, in particular, that the General Court should have annulled the decision of the Commission, inasmuch as it imputed to Eni the liability for the infringement committed by Syndial SpA (formerly EniChem SpA, another company in the Eni group) and/or Versalis.

The Court of Justice recalls today that, in accordance with established case-law, the conduct of a subsidiary may be imputed, for the purposes of the application of the competition rules, to the parent company particularly where, although having separate legal personality, that subsidiary does not autonomously determine its conduct on the market but mostly applies the instructions given to it by the parent company.

In the particular case in which a parent company holds all or almost all of the capital in a subsidiary which has committed an infringement of the EU competition rules, there is a *rebuttable* presumption that that parent company exercises an actual decisive influence over its subsidiary. In the present case, for the entire duration of the infringement in question, Eni held, directly or indirectly, at least 99.97% of the capital in the companies which were directly active within its group in the BR and ESBR sectors (EniChem Elastomeri, EniChem SpA and Versalis). Since the parent company and its subsidiary form, in the present case, a single undertaking, the Commission may impose fines on the parent company without having to establish its individual involvement in the infringement.

The presumption of actual decisive influence, applied by the Commission and confirmed by the General Court, is not irrebuttable. To rebut the presumption, Eni would have had to show that Versalis could act with complete autonomy not only at the operational level but also at the financial level, which it failed to do.

The Court of Justice also rejects Eni's argument that, on the basis of the limited liability of capital companies and the separate legal personality of companies, the company is not liable for the infringement committed by its subsidiaries.

As it follows from established case-law, EU competition law is based on the concept of an undertaking designating an economic unit – even if in law that economic unit consists of several persons, natural or legal – which entity must, according to the principle of personal responsibility, answer for infringements of the competition rules.

In consequence, the Court of Justice dismisses the appeals in their entirety.

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 judgment is published on the CURIA website on the day of delivery.

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