



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-668/11 P
Alliance One International Inc. v Commission and C-679/11 P
Alliance One International Inc. v Commission

The Court confirms the judgments of the General Court reducing the fines imposed by the Commission on Alliance One International Inc. and its subsidiary Agroexpansión SA for their participation in a cartel on the raw tobacco market in Spain

The Court also dismisses the cross-appeal brought by the European Commission

Agroexpansión SA is one of four undertakings engaged in the initial processing of raw tobacco in Spain¹. Deltafina SpA, an Italian company which also processes raw tobacco, was the principal purchaser of that product on the Spanish market.

Agroexpansión, originally a family business, was purchased in 1997 by Intabex Netherlands BV. At that time Intabex belonged to the Intabex group of companies, which had been acquired by Dimon Inc. in April 1997. **Alliance One International Inc ('AOI'), established in the United States, is the result of a merger, carried out in 2005, of Dimon and the American company Standard Commercial Corp.**

In 2001 the Commission carried out inspections at the premises of undertakings which included Agroexpansión, in order to check information that the processors and the Spanish producers of raw tobacco had infringed the European rules in relation to anti-competitive practices. Following those inspections the Commission sent a statement of objections to 20 undertakings or associations, including the processors, Deltafina, Dimon and Intabex.

On 20 October 2004 the Commission adopted a decision² in which it declared that a horizontal cartel had been entered into and implemented on the Spanish raw tobacco market by the processors and Deltafina. The object of that cartel was to fix each year, in the period from 1996 to 2001, the average delivery price for each variety and grade of raw tobacco and to share out the quantities of each variety of raw tobacco that each of the processors could purchase from the producers. Between 1999 and 2001 the processors and Deltafina also agreed price brackets per quality grade for each raw tobacco variety as well as average minimum prices per producer and producer group.

The Commission imposed fines on the undertakings and associations concerned. In calculating the fine, the Commission granted to Agroexpansión a 20% reduction, on the basis of its cooperation, the final amount being €2.59 million, Dimon being held jointly and severally liable for payment of that fine.

The two undertakings brought two separate actions before the General Court of the European Union for the annulment of that decision or, alternatively, for reduction of the fine imposed.

By two judgments delivered in 2011, the General Court, first, granted to Agroexpansión³, on the basis of its cooperation, a further reduction of 5% of its fine in addition to the reduction of 20%

¹ The other three processors are : Compañía española de tabaco en rama SA ; Tabacos Españoles SL, and World Wide Tobacco España, SA

² Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 - Raw tobacco - Spain)

³ Case [T-38/05](#) Agroexpansión v Commission.

already granted by the Commission and **fixed at €2.43 million the final amount of the fine imposed on Agroexpansión.**

Secondly, in relation to AOI (formerly Dimon)⁴, the General Court held that Dimon could not be held jointly and severally liable for the infringement before 18 November 1997 (the date of Intabex's purchase of Agroexpansión). Consequently, the General Court reduced the rate of increase applied to the starting amount of the fine imposed on AOI because of the duration of the infringement from 50% to 35%. In addition, the General Court applied to AOI the same further reduction of 5% which it had granted to Agroexpansión, on the basis of the latter's cooperation, **the final amount of Agroexpansión's fine for which AOI was also liable was therefore set at €2.19 million.**

AOI brought these appeals before the Court of Justice⁵ in order that those judgments might be set aside. The Commission also brought a cross-appeal against the judgments of the General Court.

By today's judgments, the Court dismisses the appeals brought by AOI and the cross-appeal brought by the Commission and confirms the judgments of the General Court.

The Court rejects the argument raised by AOI that the General Court erred in law by re-interpreting the Commission's decision, following explanations which were produced by the Commission subsequent to that decision, in order to mitigate the infringements of the obligation to state reasons and the principle of equal treatment allegedly committed by the Commission in its decision.

The Court refers, first, to its settled case-law that where the entire capital of a subsidiary is held by its parent company, the Commission may presume that the parent company actually exercises decisive influence over the commercial policy of its subsidiary. In such a situation, the Commission may impose a fine on the parent company without first having to establish the personal involvement of the parent company in the infringement. However, that case-law does not imply that the Commission is bound to rely exclusively on that presumption, **the Commission being able to establish that a parent company actually exercises decisive influence over its subsidiary by means of other evidence (the 'dual basis' method).**

In this case, the Commission had waived reliance on the application solely of the presumption of decisive influence and had decided to rely on factual evidence serving to establish that the parent companies actually exercised a decisive influence on their subsidiary.

The Court states that the General Court did not exceed the limits of its jurisdiction because the findings made by the General Court in relation to that method were based on its interpretation of the Commission's decision and not solely on the explanations produced by the Commission after the adoption of the decision. Further, the General Court did not err in law in finding, contrary to what was claimed by AOI, that the Commission had applied that method in the same way to all the parent companies concerned, including AOI.

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-668/11 P](#) and [C-679/11 P](#)) is published on the CURIA website on the day of delivery.

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⁴ Case [T-41/05](#) Alliance One International v Commission.

⁵ In Case C-668/11 P Alliance One International succeeded to the rights of its subsidiary Agroexpansión.