



Court of Justice of the European Union

**PRESS RELEASE No 150/13**

Luxembourg, 26 November 2013

Judgments in Cases C-40/12 P, C-50/12 P and C-58/12 P  
Gascogne Sack Deutschland GmbH, Kendrion NV and Groupe Gascogne  
SA v Commission

Press and Information

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**The Court of Justice confirms the judgments of the General Court on the participation of the companies Gascogne Sack Deutschland, Groupe Gascogne and Kendrion in a cartel in the industrial plastic bags sector**

*Those companies may nevertheless bring actions for damages seeking compensation for possible damage which they may have suffered as a result of the excessive length of the proceedings before the General Court*

In 2005, the Commission imposed fines totalling over €290 million on several undertakings for participating in a cartel in the industrial plastic bags sector<sup>1</sup>. In the Commission's view, the infringement consisted mainly in (i) the fixing of prices and the establishment of common price calculation models, (ii) the sharing of markets and the allocation of sales quotas, (iii) the assignment of customers, deals and orders and (iv) the exchange of information in Belgium, Germany, Spain, France, Luxembourg and the Netherlands.

Certain undertakings which had participated in that cartel brought actions before the General Court for the annulment of the Commission's decision or for the reduction of the fines imposed on them. By its judgments delivered on 16 November 2011<sup>2</sup>, the General Court ruled on some of those actions, dismissing those brought by the companies Kendrion NV, Groupe Gascogne SA and Sachsa Verpackung GmbH (now Gascogne Sack Deutschland GmbH). Consequently, the amounts of the fines imposed on those companies remained unchanged.

Those three undertakings brought appeals before the Court of Justice against the judgments of the General Court<sup>3</sup>.

In its judgments in those appeals delivered today, the Court of Justice notes, first of all, that when a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules, there is a simple presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary. Therefore, the Commission is able to regard the parent company as jointly and severally liable for payment of the fine imposed on its subsidiary.

That is not, however, the case if the parent company adduces sufficient evidence to show that its subsidiary acts independently on the market. However, since Groupe Gascogne and Kendrion failed to adduce such evidence, the Court confirms that the Commission was entitled to attribute

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

<sup>2</sup> Judgments of 16 November 2011 in Case [T-51/06 Fardem Packaging BV v Commission](#); [T-54/06 Kendrion NV v Commission](#); Joined Cases [T-55/06](#) and [T-66/06 RKW SE v Commission](#) and [JM Gesellschaft für industrielle Beteiligungen mbH & Co. KGaA v Commission](#); Case [T-59/06 Low & Bonar plc and Bonar Technical Fabrics NV v Commission](#); Case [T-68/06 Stempher BV and Koninklijke Verpakingsindustrie Stempher CV v Commission](#); Case [T-72/06 Groupe Gascogne SA v Commission](#); Case [T-76/06 Plásticos Españoles SA \(ASPLA\) v Commission](#); Case [T-78/06 Álvarez SA v Commission](#) and Case [T-79/06 Sachsa Verpackung GmbH v Commission](#); see also Press Release [121/11](#). In Case [T-26/06 Trioplast Wittenheim SA v Commission](#), Case [T-40/06 Trioplast Industrier v Commission](#), Case [T-53/06 UPM-Kymmene Oyj v Commission](#), Case [T-64/06 FLS Plast v Commission](#) and Case [T-65/06 FLSmidth v Commission](#), which are also related to that cartel, the General Court delivered its judgments on 13 September 2010 and 6 March 2012, respectively.

<sup>3</sup> Appeals were also brought against the judgments delivered in Cases [T-64/06](#), [T-65/06](#), [T-76/06](#) and [T-78/06](#) (see Cases [C-243/12 P](#), [C-238/12 P](#), [C-35/12 P](#) and [C-36/12 P](#) currently pending).

liability to them for the infringement committed by their respective subsidiaries, namely Sachsa Verpackung and Fardem Packaging. The Court also points out that the fact that the amount of the fine imposed on Kendrion (€34 million) is much higher than that imposed on its subsidiary (€2.2 million) is because, at the date of adoption of the Commission's decision on the cartel in question, the two companies no longer constituted the same undertaking. Thus, after Kendrion sold its subsidiary, the maximum amount of the fine that could be imposed for participating in a cartel, which corresponds to 10% of the annual turnover of the company concerned, had to be calculated differently for each of the two companies.

Next, the Court considers whether the argument of the three companies, according to which the duration of the proceedings before the General Court was excessively lengthy and, therefore, caused them loss, may have a bearing on the present cases.

In that regard, the Court notes, first, that where the excessive length of the proceedings does not affect their outcome, failure to deliver judgment within a reasonable time cannot lead to the setting aside of the judgment under appeal in the context of appeal proceedings. In the present case, the companies concerned have not provided any evidence to the Court demonstrating that a failure by the General Court to adjudicate within a reasonable time could have affected the outcome of the disputes before it. Consequently, the Court dismisses the companies' claims seeking, on that ground, to have the judgments of the General Court set aside.

Secondly, the Court points out that an application for damages brought against the European Union<sup>4</sup> constitutes an effective remedy of general application for asserting and penalising such a breach, since such a claim can cover all the situations where a reasonable period of time has been exceeded in proceedings. It follows that **a claim for compensation for the damage caused by the failure by the General Court to adjudicate within a reasonable time may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself, by way of an action for damages.** In such an action, it will be for the General Court to appraise, in the light of the circumstances specific to each case, whether it has observed the reasonable time principle. It will also be for the General Court to assess whether the parties concerned have actually suffered harm because their right to effective legal protection has been breached.

In that context, the Court makes clear that, when determining actions for damages, the General Court must take into consideration the general principles applicable in the legal systems of the Member States for actions based on similar breaches. It must, in particular, ascertain whether it is possible to identify, in addition to any material loss, any other type of harm sustained by the party affected by the excessive period, which should, where appropriate, be suitably compensated.

That said, the Court finds that, in the present case, **the length of the proceedings** before the General Court, which amounted to approximately 5 years and 9 months, **cannot be justified by any of the circumstances in connection with those cases.** The excessive length of the proceedings cannot be explained by the complexity of the dispute, the conduct of the parties or the specific features of the procedures. Accordingly, the Court concludes **that the procedures in the General Court breached the right of the parties to have their case heard within a reasonable time conferred on them by the Charter of Fundamental Rights of the European Union.** The Court also notes that the breach of that right is sufficiently serious and may therefore give rise to liability on the part of the European Union for the damage arising therefrom.

In those circumstances, **the Court dismisses the appeals of the three undertakings in their entirety.**

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<sup>4</sup> Pursuant to Article 268 TFEU and the second paragraph of Article 340 TFEU.

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

*The full texts of the judgments ([C-40/12 P](#), [C-50/12 P](#) and [C-58/12 P](#)) are published on the CURIA website on the day of delivery.*

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