



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-597/13 P Total SA v Commission and  
C-634/13 P Total Marketing Services SA v Commission

## **The Court of Justice reduces the fine imposed on Total jointly and severally with Total France from €128 million to €125 million**

*The General Court erred in law in not bringing Total's fine into line with the reduced fine of its subsidiary, Total France*

Paraffin waxes, manufactured from crude oil, are used for the production of a variety of products such as candles, chemicals, tyres and automotive products as well as in the rubber, packaging, adhesive and chewing gum industries. Slack wax is the raw material required for the manufacture of paraffin waxes. It is also sold to end-customers, such as producers of particle boards.

By decision of 2008,<sup>1</sup> the Commission found that Total and its subsidiary, Total France, had, with other undertakings, participated in a cartel concerning the EEA market for paraffin waxes (from 1992 to 2005) and the German market for slack wax (from 1997 to 2004). Total France was held jointly and severally liable with Total to pay a fine of €128 163 000 (Total, as a parent company, being liable for the unlawful conduct of its wholly owned subsidiary). Total and Total France subsequently asked the General Court to annul the Commission's decision. In a judgment of 13 September 2013,<sup>2</sup> the General Court dismissed Total's application. Nevertheless, in the parallel case regarding the application of the subsidiary, Total France, in a judgment of the same day,<sup>3</sup> the General Court reduced the fine imposed on Total France to €125 459 842, holding that the Commission had established too long a period of participation for that undertaking.

Total and Total France (now Total Marketing Services) both brought an appeal<sup>4</sup> before the Court of Justice to have the judgments of the General Court set aside.

In today's judgments, the Court of Justice rules on both appeals. **It dismisses Total France's appeal but upholds that of Total in part by holding that the General Court should have granted Total the same reduction in the fine as granted to its subsidiary.**

With regard to Total's appeal, the Court of Justice notes that in a situation where the liability of a parent company is purely derivative of that of its subsidiary and where no other factor individually reflects the conduct for which the parent company is held liable, the liability of that company cannot exceed that of its subsidiary. Furthermore, the Court notes that where a parent company and its subsidiary each bring parallel applications having the same object (as was the case before the General Court), there is not only the possibility, in connection with the application brought by the parent company, of having regard to the outcome of the application of the subsidiary from which its liability is entirely derived, but, the parent company must, in principle, also benefit from any reduction in the liability of its subsidiary which had been imputed to it. Consequently, the Court held that **the General Court erred in law in not having regard to the outcome of the Total France judgment vis-à-vis Total**. The Court therefore sets aside the judgment of the General Court in so far as that court did not bring the fine imposed on Total into line with the fine imposed on Total

<sup>1</sup> Commission Decision C(2008) 5476 final of 1 October 2008, relating to a proceeding under Article [81 EC] and Article 53 of the EEA Agreement (Case COMP/39.181 — Candle waxes) (summary published in OJ 2009 C 295, p. 17).

<sup>2</sup> Case: [T-548/08](#) Total v Commission.

<sup>3</sup> Case: [T-566/08](#) Total Raffinage Marketing v Commission.

<sup>4</sup> Total France's appeal was brought by the indirect means of Total Marketing Services.

France. In exercising its power to amend, the Court therefore sets **the fine imposed on Total jointly and severally with Total France at €125 459 842.**

Total France, for its part, claims a reduction in the fine on the ground first of all that it ceased participating in the cartel from May 2004 and also that it interrupted its participation in the cartel from May 2000 to June 2001.

**The Court holds that the General Court erred in law in considering that an undertaking's publically distancing itself from a cartel constitutes the only means available to an undertaking of proving that it has ceased participating in a cartel, even in the case where that company has not participated in some anti-competitive meetings. Nevertheless, that error of law cannot lead to the setting aside of the judgment in so far as Total France's participation in the infringement in those periods is concerned.** With regard to the period between May 2004 and the end of the cartel at issue, the Court holds that although it did not actually participate in the last three collusive meetings of the cartel between 12 May 2004 and 29 April 2005, Total France did not cease participating in the cartel, on the basis of objective and consistent indicia assessed in conjunction with the fact that that undertaking did not distance itself publically from the cartel.

In relation to the period between May 2000 and June 2001, the Court holds that there are, once again, objective and consistent indicia which allow the finding that Total France's participation in the cartel was not interrupted during that period; the fact that Total France's representative left a meeting in May 2000 abruptly is explained by personal reasons, and cannot be regarded as an expression of Total France's own intention to distance itself from the cartel, particularly because, after that representative's replacement by another employee, Total France began to participate in the collusive meetings again.

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**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-597/13 P](#) and [C-634/13 P](#)) is published on the CURIA website on the day of delivery.*

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