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Press and Information

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Judgments of the Court of First Instance in Cases T-15/02 & T-26/02

BASF AG v Commission of the European Communities
Daiichi Pharmaceutical Co.Ltd v Commission of the European Communities

THE CFI REDUCES THE FINES IMPOSED ON BASF TO 236.845 MILLION EUROS AND ON DAIICHI TO 18 MILLION EUROS FOR THEIR PARTICIPATION IN CARTELS IN VARIOUS VITAMIN MARKETS

The Commission failed to establish that BASF had acted as instigator or leader of the cartels relating to vitamins C and D3, beta-carotene and carotinoids and has underestimated the importance of the cooperation of BASF and Daiichi.

On 21 November 2001 the Commission found that several companies had infringed Community competition law by participating in a series of cartels in 12 different vitamin markets. For the infringements relating to vitamins A, E, B2, B5, C and D3, beta-carotene and carotinoids, the Commission imposed fines totalling 855.23 million euros. No fine was imposed for the infringements on the other markets (vitamins B1, B6, H and folic acid). For its part in the infringements, BASF, a German company, was the subject of eight fines totalling 296.16 million euros. Daiichi, a Japanese company, was subject to a fine of 23.4 million euros for its part, together with BASF and Hoffman-La Roche, in the cartel relating to vitamin B5.

BASF and Daiichi contested this decision before the Court of First Instance, requesting the annulment or reduction of the fine.

Today **the Court has rejected the majority of the arguments** of BASF and Daiichi. **Nevertheless, the Court rules that the Commission committed certain errors when calculating the fines which imply that some of the fines imposed on the companies must be reduced.**

BASF:

Increase of the fines by virtue of aggravating circumstances:

The Court finds that, neither in the decision itself, nor before the Court, did the Commission establish sufficiently that BASF had acted as leader or instigator in the infringement on the vitamin C market. As a consequence the Court eliminates the increase of 35% of the basic amount of the fine imposed on BASF for this infringement.

The Court further finds that the reasoning given for the increases of 35% for aggravating circumstances of the basic amount of the fines imposed on BASF for the infringements relating to vitamin D3, beta-carotene and carotinoids is inadequate in that it does not explain whether that increase was imposed in respect of BASF's instigation of or leadership in the infringement, or even both at once. Furthermore, the Court considers that the reasons laid out in the decision do not in themselves substantiate the finding that BASF was a leader in or instigator of these infringements. Finally the Court rules that this increase of the fines should be annulled.

Reduction of the fines in accordance with the Leniency Notice

In its decision, the Commission excluded the possibility for BASF to benefit from a reduction in its fines in accordance with sections B and C of the Leniency Notice, notably on the basis of BASF's instigation of or leadership in the eight cartels subject to a fine. Given that the Court has found that BASF did not instigate or lead the cartels relating to vitamins C and D3, beta-carotene and carotinoids, the Court has examined whether such a reduction should be granted to this company.

As concerns the infringement relating to vitamin D3, the Court finds that BASF did not provide the Commission with decisive evidence of the existence of this infringement. As a result, BASF does not merit a reduction of the fine for this infringement in accordance with section B of the Leniency Notice.

As regards the infringement relating to vitamin C, the Court notes that, even if BASF provided the Commission, voluntarily, with decisive evidence of the existence of the cartel, it was not the first to do so, Roche having provided such evidence beforehand. BASF does not therefore fulfil all the requisite conditions for a reduction of this fine in accordance with section B of the Leniency Notice.

On the other hand, BASF was the first to provide the Commission with decisive evidence of the existence of the cartels relating to beta-carotene and carotinoids. Consequently the Court considers that BASF should benefit from an increase from 50% to 75% of the reduction of the fines imposed for these infringements.

The amounts of the fines imposed on BASF are therefore reduced as follows.

- infringement relating to **vitamin C**: from 14.68 to **10.875 million euros**;
- infringement relating to **vitamin D3**: from 7.56 to **5.6 million euros**;
- infringement relating to **beta-carotene**: from 43.2 to **16 million euros**;
- infringement relating to **carotinoids**: from 41.85 to **15.5 million euros**.

The **total amount** for all the infringements is therefore reduced from 296.16 to **236.845 million euros**.

Daiichi:

The Court considers that the Commission underestimated the importance of the cooperation of Daiichi and finds that the reduction granted to this company in accordance with section D of the Leniency Notice should accordingly be increased from 35% to 50%, the maximum allowable reduction under that section.

The final amount of the fine imposed on Daiichi is therefore reduced from 23.4 to **18 million euros**.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: EN, FR

The full texts of the judgments may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-15/02>

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-26/02>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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