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Press and Information

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Judgment of the Court of First Instance in Case T-101/05 and T-111/05

BASF and UCB v Commission

THE COURT OF FIRST INSTANCE INCREASES THE FINE IMPOSED BY THE COMMISSION ON BASF AND REDUCES THE FINE IMPOSED ON UCB FOR THEIR PARTICIPATION IN A CARTEL ON THE CHOLINE CHLORIDE MARKET

The Court of First Instance annuls the Commission's decision and recalculates the fines in the exercise of its unlimited jurisdiction

By decision of 9 December 2004,¹ the Commission imposed fines amounting to EUR 66.34 million on Akzo Nobel, BASF and UCB for their participation in a complex of agreements and concerted practices involving price-fixing, market-sharing and concerted actions against competitors in the choline chloride (vitamin B4 used in animal feed) sector in the European Economic Area (EEA). Four North American producers, and five companies in the Akzo Nobel group plus BASF AG and UCB SA, participated in anti-competitive activities having as their purpose the allocation of worldwide markets between June 1992 and April 1994. Only the European producers mentioned above participated in meetings leading to the division of the EEA between March 1994 and October 1998.

As the North American producers had ceased to participate in the infringement by no later than 20 April 1994, they were not fined, since the Commission launched its investigation on 26 May 1999, that is to say, after expiry of the limitation period of five years. However, the Commission imposed on the European producers fines reflecting their participation in both the global arrangements and the European arrangements, on the ground that all of those activities constituted a single and continuous infringement.

By their appeals, BASF and UCB sought annulment or a reduction of the fines imposed on them.

¹ Case COMP/E-2/37.533 – Choline chloride, Decision 2005/566/EC (summary published in OJ 2005 L 190, p. 22).

The Court examines whether the global and European arrangements in the present case constitute a single and continuous infringement or whether they must be regarded as two separate infringements.

Since:

- there was no temporal overlap between the application of the global arrangements and that of the European arrangements;
- the two sets of arrangements pursued different objectives;
- they were implemented by dissimilar methods; and
- the Commission failed to demonstrate that the European producers intended to adhere to the global arrangements for the purpose of subsequently sharing the EEA market,

the Court concludes that the European producers committed two separate infringements.

Consequently, the Court annuls the decision in so far as it imposes a fine on the applicants for their participation in the global cartel, since that infringement is deemed to be time-barred.

As regards the impact of that annulment on the calculation of the fine imposed on BASF by the Commission, the Court cancels the benefit of the 10% reduction granted for cooperation, since the information provided under that head concerned the global arrangements, whereas the information which BASF provided about the European arrangements was only of minimum value.

Referring to its jurisdiction² to substitute its own assessment for that of the Commission as regards the amount of a fine, the Court recalculates BASF's fine. It increases the starting amount (EUR 18.8 million) by 38% to reflect the duration of the infringement (instead of the 55% applied by the Commission), before applying an increase of 50% for repeated infringement and a reduction of 10% because BASF did not substantially dispute the accuracy of the facts during the administrative procedure; the Court thus fixes the **total amount of BASF's fine at EUR 35.024 million, or EUR 54 000 more than the fine imposed by the Commission.**

As regards UCB, the Court observes that since the Commission is entitled, albeit subject to certain conditions, to apply retroactively and to the detriment of those concerned, rules of conduct such as the Guidelines, there is no general obligation for it to apply retroactively whichever rule is less onerous (in this case the 2002 Leniency Notice³).

Furthermore, in view of the fact that UCB reported the European cartel, which enabled the Commission to impose significant fines – which it would have been unable to do solely on the basis of the global cartel – the Court evaluates UCB's cooperation⁴ and grants it a reduction of 90% of the fine that would otherwise have been imposed on it.

² Article 229 EC and Article 31 of Council Regulation No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82[EC] (Text with EEA relevance) (OJ 2003 L 1, p. 1.

³ OJ 2002 C 45, p. 3

⁴ Commission Notice on the non-imposition or reduction of fines in cartel cases, section B (OJ 1996 C 207, p. 4).

The amount of UCB's fine is thus reduced to EUR 1.870 million.

Case	Undertaking	Fines imposed by the Commission (EUR millions)	Fines fixed by the Court of First Instance (EUR millions)
T-101/05	BASF	34.97	35.024 (increase of EUR 54 000)
T-111/05	UCB	10.38	1.870 (reduction of EUR 8.51 million)

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, DE

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-101/05>

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

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