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## Press and Information

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Judgment of the Court of First Instance in Case T-112/05

*Akzo Nobel and Others v Commission*

#### **THE COURT OF FIRST INSTANCE UPHOLDS THE COMMISSION'S DECISION IMPOSING A FINE ON FIVE COMPANIES IN THE AKZO NOBEL GROUP FOR THEIR PARTICIPATION IN A CARTEL ON THE CHOLINE CHLORIDE MARKET**

*An examination of the organisational links between the top holding company of the Akzo Nobel group and its subsidiaries involved in the infringement in question did not lead the Court of First Instance to find that the presumption that that parent company exercises decisive influence over the conduct of the subsidiaries has been rebutted*

By decision of 9 December 2004,<sup>1</sup> the Commission imposed fines amounting to EUR 66.34 million on five companies in the Akzo Nobel group, BASF AG and UCB SA 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). At global level, four North American producers and the European producers Akzo Nobel, BASF and UCB 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.

Akzo Nobel brought an action before the Court of First Instance for annulment of the Commission's decision. It claimed that the Commission was wrong to consider that the four companies in the Akzo Nobel group which had participated (directly or indirectly) in the collusive arrangements constituted a single undertaking together with the top holding company of the group (Akzo Nobel NV), to which the contested decision was also addressed.

In that regard, the Court observes that it is not because of a relationship between the parent company and its subsidiary in instigating the infringement or, *a fortiori*, because the parent company is involved in the infringement, but because they constitute a single undertaking within the meaning of Article 81 EC that the Commission is able to address the decision imposing fines to the parent company of a group of companies.

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

In the particular case where a parent company holds 100% of the capital of a subsidiary which has engaged in anti-competitive conduct, there is a rebuttable presumption that the parent company exercises decisive influence on its subsidiary's conduct. It is for the parent company to rebut that presumption by placing before the Court any evidence relating to the economic and legal organisational links between its subsidiary and itself which in its view is capable of demonstrating that they do not constitute a single economic entity.

In the present case, examination of the organisational links between the top holding company of the Akzo Nobel group and the subsidiaries involved in the infringement in question did not lead the Court to consider that the presumption referred to above was rebutted. In addition, the Court observes that the maximum amount of 10% of turnover to which any fine in competition matters must be limited must be calculated on the basis of the combined turnover of all the undertakings constituting an undertaking within the meaning of Article 81 EC.

**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-112/05>*

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

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