



LUXEMBOURG

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TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS  
SOUD PRVNÍHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ  
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GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN  
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EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

### PRESS RELEASE No° 40/09

30 April 2009

Judgments of the Court of First Instance in Cases T-12/03, T-13/03 and T-18/03

*Itochu Corp., Nintendo and Nintendo of Europe, CD-Contact Data v Commission*

### **THE COURT OF FIRST INSTANCE REDUCES THE FINES IMPOSED ON THE NINTENDO GROUP AND CD-CONTACT DATA TO EUR 119.24 MILLION AND EUR 500 000 RESPECTIVELY AND UPHOLDS THE FINE IMPOSED ON ITOCHU**

*The undertakings were punished for their anti-competitive conduct on the market for Nintendo video game consoles and game cartridges*

By decision of 30 October 2002<sup>1</sup>, the Commission imposed fines on Nintendo and on some of its distributors for having participated in a complex of agreements and concerted practices in the markets for Nintendo consoles and game cartridges. The decision concerns Nintendo and seven exclusive distributors of its products, namely: John Menzies plc (United Kingdom), Concentra - Produtos para crianças S.A. (Portugal), Linea GIG. S.p.A. (Italy), Bergsala AB (Sweden), Itochu Hellas, the wholly-owned Greek subsidiary of the Japanese undertaking Itochu Corporation, Nortec A.E. (Greece), and CD-Contact Data GmbH (Belgium and Luxembourg).

In accordance with the agreements entered into, each distributor was required to prevent parallel trade originating from its territory. The undertakings collaborated closely in order to identify the origin of any parallel trade. Operators which allowed parallel exports were punished by a reduction of their supply or by a total boycott by Nintendo. The Commission decided that, since the conduct of those undertakings from 1991 until 1997 had had the object and effect of restricting parallel exports of the products, it was contrary to Community law.

The Commission imposed a fine totalling EUR 167.843 million. Nintendo, the instigator and leader of the infringement, was fined EUR 149.128 million. Itochu and CD-Contact Data were fined EUR 4.5 million and EUR 1 million respectively.

By their actions before the Court, those three undertakings sought either the annulment of the Commission's decision or a reduction of their fine.

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<sup>1</sup> Decision 2003/675/EC relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega – Nintendo) (OJ 2003 L 255, p.33)

The Court recalled that the basic amount of the fine may be reduced where the undertaking has effectively cooperated in the proceedings. In the contested decision, the Commission took account of John Menzies's cooperation, with the result that it reduced that undertaking's fine by 40%. The Court held that pursuant to the principle of equal treatment, since Nintendo produced the relevant documents at the same stage of the procedure and its cooperation must be regarded as comparable, it must benefit in this respect from the same level of reduction of fine.

Consequently, **the Court reduced the fine imposed on Nintendo to EUR 119.2425 million.**

The Court found that CD-Contact Data, exclusive distributor for Belgium and Luxembourg, played a passive role in the infringement, like Concentra, the distributor for Portugal. Since the Commission had reduced Concentra's fine by 50%, **the Court decided to reduce the fine imposed on CD-Contact Data to EUR 500 000**, pursuant to the principle of equal treatment.

As for Itochu Corp., established in Japan, **the Court upheld the Commission's decision fining it EUR 4.5 million** for its participation in the agreements in question and for its anti-competitive conduct. The Court decided that that undertaking had not adduced sufficient evidence to rebut the presumption that it in fact exercised decisive influence over the conduct of its Greek subsidiary Itochu Hellas.

**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: FR BG DE EN ES EL IT NL PT*

*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-12/03>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-13/03>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-18/03>

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

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