

Press and Information Division

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Judgment of the Court of Justice in Cases C-204/00 P and others

*Aalborg Portland, Irish Cement Ltd., Ciments français SA, Italcementi – Fabbriche Riunite Cemento SpA, Buzzi Unicem SpA and Cementir – Cementerie del Tirreno SpA*

**THE COURT OF JUSTICE UPHOLDS IN SUBSTANCE THE JUDGMENT  
DELIVERED BY THE COURT OF FIRST INSTANCE IN 2000  
CONCERNING THE CEMENT CARTEL**

*Only the fine imposed on Ciments français SA is reduced, from EUR 13,570,000 to EUR 9,620,000; the fines imposed on the other parties have been upheld.*

Anti-competitive practices and agreements constitute economic infringements designed to maximise the profits of the participating undertakings. The harmful effects for the markets and for consumers are particularly serious in the cement sector, since they are passed on to the construction and housing sector and to the real-estate market in general.

By a decision of 1994, the Commission condemned a series of agreements and practices in the European market in white and grey cement and imposed fines amounting in all to approximately EUR 250 million.

On an action by the undertakings and associations of undertakings concerned, the Court of First Instance of the EC, by a judgment delivered in 2000<sup>1</sup>, essentially upheld the Commission decision; however, it amended the fines imposed (to reflect the undertakings' degree of involvement in the cartel) and reduced them to a total of approximately EUR 110 million.

Six undertakings<sup>2</sup> subsequently appealed to the Court of Justice.

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<sup>1</sup> Judgment of the Court of First Instance of 15 March 2000, see Press Release 16/00 (<http://curia.eu.int/en/actu/communiqués/cp00/aff/cp0016en.htm>)

<sup>2</sup> See table below.

In an appeal, the Court confines itself to examining questions of law, to the exclusion of any assessment of the facts: it must ascertain that the Court of First Instance did not make any errors of law or of reasoning or distort the evidence.

In the judgment delivered today, the Court of Justice essentially upholds the judgment of the Court of First Instance.

As regards the appeal brought by **Buzzi Unicem SpA** (formerly Unicem SpA), which maintains that the Court of First Instance made an error of assessment by making a double imputation of liability (at Community and national level) which was inconsistent with the dropping of the national complaints and the decision of the Italian competition authority, the Court of Justice endorses the findings of the Court of First Instance. In order for there to be a double imputation of liability, the facts, the offender and the legal interest protected must be identical. The Court of First Instance correctly held that there was no identity between the facts referred to by the decision of the Italian authority and those referred to by the Commission decision.

The appeal lodged by **Aalborg Portland A/S** sought to establish, *inter alia*, that the Court of First Instance had incorrectly imputed to it the infringements committed by Aktieselskabet Aalborg Portland – Cement Fabrik, on the ground that that undertaking had not ceased to exist, even though its economic activities had been transferred to Aalborg. The Court of Justice has upheld the decision whereby the Court of First Instance concluded that the two companies constitute the same economic entity (the undertaking run by Aalborg from 1990 is the same as that previously run by the other company).

As regards the **determination of the fines**, the assessment of their proportionality to the gravity and duration of the infringement falls within the jurisdiction of the Court of First Instance. In its judgment, the Court of First Instance had reduced the fines imposed by the Commission proportionately, by establishing the actual duration of the undertakings' and associations' participation in the cartel (which was shorter than that found by the Commission).

The Court of Justice has substantially upheld the findings of the Court of First Instance concerning the fines.

Only the **amount of the fine** imposed on **Ciments français** has been reduced by the Court of Justice. Arguing that it had not assumed control of its Belgian subsidiary until 1990, Ciments français contended that the turnover relating to that subsidiary should be excluded from the calculation of the fine (as the Court of First Instance had done in the case of the Spanish and Greek subsidiaries, control of which Ciments français had also acquired in 1990).

Owing to that **manifest error of assessment**, the judgment of the Court of First Instance is set aside as regards the amount of the fine imposed on Ciments français. As the Court of Justice had before it all the necessary evidence, **it has given final judgment itself in the matter** and - on the basis of the figures provided by Ciments français and not disputed by the Commission - reduced the fine imposed on Ciments français to **EUR 9,620,000**.

Case No	Names of parties	Amount of fines imposed by the Commission  (Decision 94/815/CE of 30 November 1994)  (Euros)	Amount of fines imposed by the Court of First Instance  (judgment of 15 March 2000)  (Euros)	Amount of fines established by the Court of Justice  (judgment of 7 January 2004)  (Euros)
<b>C-211/00 P</b>	Ciments français SA v Commission	25,768,000	13,570,000	9,620,000
<b>C-204/00 P</b>	Aalborg Portland A/S v Commission	4,008,000	2,349,000	Upheld
<b>C-217/00 P</b>	Buzzi Unicem SpA (formerly Unicem SpA) v Commission	11,652,000	6,399,000	Upheld
<b>C-205/00 P</b>	Irish Cement Ltd v Commission	3,524,000	2,065,000	Upheld
<b>C-213/00 P</b>	Italcementi – Fabbriche Riunite Cemento SpA v Commission	33,580,000	25,701,000	Upheld
<b>C-219/00 P</b>	Cementir – Cementerie del Tirreno SpA v Commission	8,248,000	7,471,000	Upheld

*Unofficial document for media use only; not binding on the Court of Justice*

*Available in Danish, English, French, German, Italian, and Spanish.*

*The full text of the judgment can be found on the internet ([www.curia.eu.int](http://www.curia.eu.int)).*

*In principle it will be available from midday CET on the day of delivery.*

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