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Press and Information

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Judgment of the Court of Justice in Case C-3/06 P

Groupe Danone v Commission of the European Communities

**THE COURT OF JUSTICE UPHOLDS THE JUDGMENT OF THE COURT OF FIRST
INSTANCE PENALISING A CARTEL OPERATING CONTRARY TO COMMUNITY
LAW ON THE BELGIAN BEER MARKET**

The fine of EUR 42.4125 million imposed on Danone therefore remains unaltered

Council Regulation No 17¹ provides that the Commission may impose fines on undertakings and associations of undertakings where they infringe Community competition law. In order to ensure the transparency and objectivity of the penalties imposed in respect of such infringements, the Commission, by its Guidelines,² determined a methodology which it has bound itself to use for the purposes of setting the amount of fines.

On 5 December 2001, the Commission adopted a decision finding that Interbrew, Danone and Alken-Maes, the latter company taken in its capacity as a subsidiary of Danone, had participated in a cartel relating to beer sold in Belgium. In that context, Danone was held responsible both for its own participation and for the participation of Alken-Maes in that cartel and the Commission imposed a fine of EUR 44.043 million on it.

At the material time, Interbrew and Alken-Maes were respectively the largest and the second-largest suppliers on the Belgian beer market.

Danone then requested the Court of First Instance to annul the Commission's decision and, in the alternative, to reduce the fine imposed on it.

In its judgment of 25 October 2005, the Court of First Instance essentially upheld the Commission's decision. However, it reduced the fine from EUR 44.043 million to EUR 42.4125 million.

Danone subsequently lodged an appeal before the Court of Justice, seeking to have the judgment of the Court of First Instance set aside in part and the amount of the fine reduced. It claimed, in

¹ Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-62, p. 87).

² Commission Notice entitled "Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty" (OJ 1998 C 9, p. 3).

particular, that the aggravating circumstance of repeated infringement upheld by the Court of First Instance had no basis in Community law.

In today's judgment, **the Court of Justice dismisses Danone's appeal in its entirety.**

The Court of Justice observes, first of all, that it is Regulation No 17 – and not the Commission's Guidelines – that constitutes the relevant legal basis on which the Commission may impose fines on undertakings which have infringed Community competition law. Under that regulation, for the purpose of determining the amount of the fine, the duration and the gravity of the infringement must be taken into consideration.

Next, as regards the gravity of the infringement, the Court of Justice considers that gravity is determined by reference to numerous elements in respect of which **the Commission has a wide discretion.** According to the Court of Justice, the fact that aggravating circumstances are taken into consideration when setting the fine is consistent with the Commission's task of ensuring compliance with the competition rules.

Furthermore, the Court of Justice makes clear that any repeated infringement is among the factors to be taken into consideration in the analysis of the gravity of the infringement. Consequently, the Commission was entitled to consider the element associated with repeated infringement to relate to the gravity of the infringement committed by Danone. The Court of First Instance was therefore correct to uphold the Commission's finding that repeated infringement constituted an aggravating circumstance.

Last, the Court holds that the application by the Court of First Instance of the method of calculating the amount of the fine was lawful. The amount of the fine, EUR 42.4125 million, therefore remains unaltered.

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

Languages available: ES, CS, DE, EN, EL, FR, IT, NL

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=C-3/06 P>

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

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