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Judgment of the Court of Justice in Joined Cases C-322/07 P, C-327/07 P and C-338/07 P

Papierfabrik August Koehler AG, Bolloré SA and Distribuidora Vizcaína de Papeles SL v Commission

THE COMMISSION'S DECISION CONCERNING A CARTEL ON THE CARBONLESS PAPER MARKET IS ANNULLED IN SO FAR AS IT CONCERNS BOLLORÉ SA

In holding Bolloré SA liable for its direct involvement as well as for its involvement as the parent company of Copigraph – but only including the latter ground in the statement of objections, the Commission infringed Bolloré's rights of defence

By decision of 20 December 2001¹, the Commission imposed fines totalling EUR 313.7 million on ten undertakings for their involvement in a price-fixing and market-sharing cartel in the carbonless paper sector, which sought essentially to achieve concerted price increases. Sappi, the eleventh participant in the cartel, enjoyed total immunity, since it was the first undertaking to cooperate with the investigation and provided decisive evidence.

By judgment of 26 April 2007, the Court of First Instance dismissed, for the most part, the actions brought by the undertakings against the decision but reduced the fines imposed on two undertakings, Papelera Guipuzcoana de Zicuñaga, SA (from EUR 1.54 million to EUR 1.309 million) and Arjo Wiggins Appelton Ltd (from EUR 184.27 million to EUR 141.75 million)².

Three of the companies (Papierfabrik August Koehler AG (EUR 33.07 million), Bolloré SA (EUR 22.68 million) and Distribuidora Vizcaína de Papeles SL (EUR 1.75 million)) appealed to the Court of Justice against the judgment.

The Court recalls that observance of the rights of the defence is a fundamental principle of Community law. In view of that, the statement of objections must contain the essential elements used against the undertaking, such as the facts alleged, the characterisation of those facts and the evidence on which the Commission relies, so that the undertaking may submit its arguments effectively in the administrative procedure. The statement of objections must also specify unequivocally the legal person on whom fines may be imposed and be addressed to that person. The Court adds that the statement of objections must indicate in which capacity an undertaking is called on to answer the allegations.

¹ Commission Decision 2004/337/EC of 20 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.212 — Carbonless paper) (OJ 2004 L 115, p. 1).

² Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Bolloré and Others v Commission* [2007] ECR II-947.

In its judgment, the Court of First Instance found that the Commission had made an error in its decision in holding Bolloré liable for the infringement on the ground of its personal and direct involvement in the cartel, whilst in the statement of objections the infringement was attributed to Bolloré solely in its capacity as the parent company of its wholly-owned subsidiary Copigraph. The Court of First Instance none the less held that that defect did not give rise to annulment of the decision as the Commission could, on the basis of other factors in the decision on which Bolloré had had the opportunity to comment, establish Bolloré's liability for the infringement of its subsidiary, irrespective of the direct involvement of Bolloré itself. Having concluded that the Commission's unlawful act did not affect the amount of Bolloré's fine, the Court of First Instance upheld the decision in so far as it required Bolloré to pay that fine.

The Court of Justice, however, finds that the fact that in the contested decision Bolloré was held liable on the ground that it was involved in the cartel in its capacity as Copigraph's parent company, as well as on the ground of its personal involvement, does not preclude the decision possibly having been based on conduct in respect of which Bolloré was not able to defend itself.

Consequently, the Court sets aside the judgment of the Court of First Instance in so far as it relates to Bolloré.

Going on to give final judgment in the case, **the Court annuls the decision in so far as it concerns Bolloré.**

Finally, **the Court dismisses the appeals brought by Papierfabrik August Koehler and Distribuidora Vizcaína de Papeles SL.**

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Languages available: ES DE EL EN FR IT

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-322/07>

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

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