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General Court of the European Union
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Judgment in Case T-29/05
Deltafina v Commission

The Court reduces the fine of €11.88 million initially imposed on Deltafina on account of its anticompetitive conduct on the Spanish raw tobacco market to €6.12 million

The Commission has failed to establish that Deltafina acted as leader of the cartel

By decision of 20 October 2004¹, the Commission imposed fines totalling €20 million on five companies, namely Compañía española de tabaco en rama (Cetarsa), Agroexpansión, World Wide Tobacco España (WWTE), Tabacos Españoles and Deltafina, for participating in a cartel on the Spanish raw tobacco market between 1996 and 2001. The cartel consisted essentially in fixing prices paid to tobacco producers and sharing out quantities purchased from the producers.

The biggest fine (€11.88 million) was imposed on Deltafina, an Italian company wholly owned by the American company Universal Corp. whose main activities are the processing of raw tobacco in Italy and the marketing of processed tobacco. Taking the view that Deltafina had acted as leader of the cartel, the Commission increased the basic amount of the fine by 50% for aggravating circumstances.

Deltafina requested the General Court of the European Union to annul the Commission's decision or to reduce the amount of the fine².

By today's judgment, **the Court rejects the arguments relied on by Deltafina concerning the annulment of the decision and finds, inter alia, that the infringement of the prohibition on anticompetitive agreements can be attributed to it in its entirety.**

The Court finds, first, that the fact that Deltafina was not present on the relevant market, namely the Spanish market for the purchase and first processing of raw tobacco, does not preclude it from being penalised for infringement of the prohibition on anticompetitive agreements, decisions or concerted practices. The object of its conduct, as coordinated with that of other undertakings, was to restrict competition on the market. The Court also notes that Deltafina, as the main customer of the tobacco processors, was active on the Spanish market immediately downstream from that on which the contested practices were implemented.

The Court goes on to point out that Deltafina actively and directly contributed to the implementation of the cartel and did so in full knowledge of the facts and intentionally. Deltafina could not have been unaware of the anticompetitive and unlawful objective of the cartel. Moreover, in the light of the important position which it held on the market for the purchase of Spanish processed tobacco and the responsibility it had for the coordination and supervision of the commercial activities of the Universal Group in Europe, Deltafina had an interest in ensuring that the restrictive practices at issue were implemented.

¹ Decision C (2004) 4030 final relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 – Raw tobacco – Spain).

² Proceedings were also brought against that decision by Cetarsa (T-33/05), Agroexpansión (T-38/05), WWTE (T-37/05) and by the parent companies of Agroexpansión (T-41/05) and WWTE (T-24/05), which were considered jointly and severally liable for payment of the fines imposed on both those companies.

However, in its examination of the claim seeking a reduction in the amount of the fine, **the Court considers that the Commission erred in finding that Deltafina acted as leader of the cartel.**

It points out that, in order to be characterised as leader, the undertaking in question must have represented a significant driving force in the cartel and borne individual and specific liability for the operation of the cartel.

The evidence relied on by the Commission is not sufficient to establish that that company represented a significant driving force in the cartel or even that its role was more important than that of any of the Spanish processors. The Court observes that, during a period lasting over five years, Deltafina was present at only a very limited number of meetings at which the unlawful agreements were concluded and that its participation in exchanges of correspondence and information between the members of the cartel was relatively limited. Moreover, there is nothing in the file to show that Deltafina took any initiatives to create the cartel, that it was instrumental in securing the participation of any of the Spanish processors or indeed that it assumed responsibility for activities usually associated with acting the part of leader of a cartel, such as chairing meetings or centralising and distributing certain data.

Consequently, **the Commission was not justified in increasing the basic amount of the fine by 50% or in taking account of that alleged role in reducing the amount of the fine by only 10% for cooperation.** The Court considers that the reduction to be applied to take account of Deltafina's cooperation should be 15%.

Therefore, **the final amount of the fine imposed on Deltafina is €6.12 million.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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