



General Court of the European Union

PRESS RELEASE No 72/11

Luxembourg, 13 July 2011

Judgments in Case T-138/07 Schindler Holding Ltd and Others; Joined Cases T-141/07 General Technic-Otis Sàrl, T-142/07 General Technic Sàrl, T-145/07 Otis SA and Others, and T-146/07 United Technologies Corp.; Joined Cases T-144/07 ThyssenKrupp Liften Ascenseurs NV, T-147/07 ThyssenKrupp Aufzüge GmbH and Others, T-148/07 ThyssenKrupp Ascenseurs Luxembourg Sàrl, T-149/07 ThyssenKrupp Elevator AG, T-150/07 ThyssenKrupp AG and T-154/07 ThyssenKrupp Liften BV; and in Case T-151/07 Kone Oyj and Others v Commission

Press and Information

The General Court reduces the fines imposed on a number of companies in the ThyssenKrupp group for their participation in a cartel on the market for the sale, installation, maintenance and modernisation of elevators and escalators

The fines imposed on companies in the Otis, Kone and Schindler groups are upheld

By decision of 21 February 2007¹, the Commission imposed fines totalling more than €992 million on a number of companies in the Otis, Kone, Schindler and ThyssenKrupp groups for having participated in cartels on the market for the sale, installation, maintenance and modernisation of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands.

The infringements found by the Commission consisted mainly in competitors sharing the markets between themselves by agreeing or concerting to allocate tenders and contracts for the sale, installation, maintenance and modernisation of lifts and escalators.

The undertakings concerned brought actions before the General Court seeking annulment of the Commission's decision or reduction of the fines imposed on them.

With regard to the companies in the ThyssenKrupp group, the Court observes that the Commission increased by 50%, on the ground of repeated infringement, the amounts of the fines imposed on the parent company, ThyssenKrupp AG, on its subsidiary, ThyssenKrupp Elevator AG, and on certain national subsidiaries. In 1998, the Commission had penalised certain companies belonging to the ThyssenKrupp group for their participation in a cartel in relation to an alloy surcharge².

First, the Court points out that the Commission had, in an earlier decision, made a finding of infringement solely against those companies, but not against their parent companies at the material time, of which ThyssenKrupp AG is the economic and legal successor. Furthermore, in that decision the Commission had not considered that the subsidiaries and their parent companies formed an economic entity. Second, the Court points out that it is not clear from the contested decision that the subsidiaries on which fines were imposed in the context of the alloy surcharge cartel are among the undertakings fined in the decision which is the subject-matter of the present actions. Thus, the Court concludes that, in this instance, the infringements found by the Commission cannot be considered to be repeated infringement by the same undertakings.

¹ Commission Decision C (2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 [EC] (Case COMP/E-1/38.823 – Elevators and Escalators), a summary of which is published in the *Official Journal of the European Union* (OJ 2008 C 75, p. 19)

² Commission Decision 98/247/ECSC of 21 January 1998 relating to a proceeding pursuant to Article 65 [CS] (Case IV/35.814 - Alloy surcharge) (OJ 1998 L 100, p. 55) and Decision C (2006) 6765 final relating to a proceeding under Article 65 [CS] (Case No COMP/F/39.234 – Alloy surcharge – re-adoption).

Accordingly, the Court decides to reduce the fines imposed on the companies in the ThyssenKrupp group.

With regard to the companies in the Otis, Kone and Schindler groups, the Court rejects all the arguments put forward and decides, as a consequence, to uphold the fines imposed on them.

Companies	Fines imposed by the Commission	Decision of the General Court
BELGIAN MARKET		
United Technologies Corp. (United States), Otis Elevator Company (United States) and Otis SA (Belgium)	Jointly and severally: €47.71 million	Actions dismissed Fine upheld
Schindler Holding Ltd (Switzerland) and Schindler SA (Belgium)	Jointly and severally: €69.30 million	Action dismissed Fine upheld
ThyssenKrupp AG (Germany), ThyssenKrupp Elevator AG (Germany), ThyssenKrupp Liften Ascenseurs NV (Belgium)	Jointly and severally: €68.61 million	Fine reduced Jointly and severally : €45.74 million
GERMAN MARKET		
Kone Oyj (Finland) and Kone GmbH (Germany)	Jointly and severally: €62.37 million	Action dismissed Fine upheld
United Technologies Corp. (United States), Otis Elevator Company (United States) and Otis GmbH & Co. OHG (Germany)	Jointly and severally: €159.04 million	Actions dismissed Fine upheld
Schindler Holding Ltd (Switzerland) and Schindler Deutschland Holding GmbH (Germany)	Jointly and severally: €21.46 million	Action dismissed Fine upheld
ThyssenKrupp AG (Germany), ThyssenKrupp Elevator AG (Germany), ThyssenKrupp Aufzüge GmbH (Germany), ThyssenKrupp Fahrtreppen GmbH (Germany)	Jointly and severally: €374.22 million	Fine reduced Jointly and severally: €249.48 million
LUXEMBOURG MARKET		
United Technologies Corp. (United States), Otis Elevator Company (United States), Otis SA (Belgium), General Technic-Otis Sàrl (Luxembourg) and General Technic Sàrl (Luxembourg)	Jointly and severally: €18.18 million	Actions dismissed Fine upheld
Schindler Holding Ltd (Switzerland) and Schindler Sàrl (Luxembourg)	Jointly and severally: €17.82 million	Action dismissed Fine upheld
ThyssenKrupp AG (Germany), ThyssenKrupp Elevator AG (Germany) and ThyssenKrupp Ascenseurs Luxembourg Sàrl (Luxembourg)	Jointly and severally: €13.37 million	Fine reduced Jointly and severally : €8.91 million
NETHERLANDS MARKET		
Kone Oyj (Finland) and Kone BV (Netherlands)	Jointly and severally: €79.75 million	Action dismissed Fine upheld

Schindler Holding Ltd (Switzerland) and Schindler Liften BV (Netherlands)	Jointly and severally: €35.17 million	Action dismissed Fine upheld
ThyssenKrupp AG (Germany) and ThyssenKrupp Liften BV (Netherlands)	Jointly and severally: €23.48 million	Fine reduced Jointly and severally: €15.65 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 judgments ([T-138/07](#); [T-141/07](#) and others; [T-144/07](#) and others and [T-151/07](#)) is published on the CURIA website on the day of delivery

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