



Press and Information

General Court of the European Union

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Judgments in Cases T-189/06

Arkema France SA v Commission and T-190/06 Total SA and Elf Aquitaine
SA v Commission

The General Court upholds the fines imposed on Arkema France and on its parent companies, Total and Elf Aquitaine, for their participation in the hydrogen peroxide and sodium perborate cartel

Arkema was ordered by the Commission to pay a fine of €78.66 million, for which Total and Elf Aquitaine were in part held jointly and severally liable

By decision of 3 May 2006¹, the Commission imposed fines totalling €388.13 million on a number of companies² for their participation in a cartel on the market for hydrogen peroxide and sodium perborate (bleaching agents). Amongst the companies penalised were Arkema France SA and its parent companies, Elf Aquitaine SA and Total SA.

The cartel consisted mainly of competitors exchanging commercially important and confidential market and company information, limiting and controlling production, allocating market shares and customers and fixing and monitoring prices. Arkema took part in the infringement from 12 May 1995 until 31 December 2000.

The Commission imposed on Arkema a fine of €78.66 million. Elf Aquitaine, which held over 96% of the authorised capital of Arkema throughout the entire period of the infringement, was held jointly and severally liable for payment of the fine as to €65.1 million. Total, which, from April 2000 until 31 December 2000, controlled over 99% of Elf Aquitaine's capital, was held jointly and severally liable for payment of the sum of €42 million.

The companies concerned brought actions before the Court for annulment of the Commission's decision or for a reduction in their respective fines.

In its two judgments delivered today, the Court rejects all the arguments put forward by the companies and therefore upholds the amounts of the fines imposed.

The Court recalls in particular that there is a presumption that a subsidiary which is wholly owned by its parent company does not decide independently upon its own conduct on the market. In accordance with settled case-law, in such a situation, the Commission is able to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement, unless the parent company adduces sufficient evidence to rebut the presumption. The Court observes that that case-law concerns only the case where a parent company holds all the capital of its subsidiary. However, the Court notes that in the present case Total and Elf Aquitaine, which held virtually all (but not all) the capital, did not object to the application of the same rules of evidence for imputing the unlawful conduct of their subsidiary in both situations.

¹ Commission Decision C(2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.620 – Hydrogen peroxide and perborate), a summary of which is published in OJ 2006 L 353, p. 54.

² The Court gave a decision on the actions of the other companies punished by the Commission for the same cartel in the judgments of 16 June 2011: [T-185/06 L'Air liquide SA v Commission](#), [T-186/06 Solvay SA v Commission](#), [T-191/06 FMC Foret SA v Commission](#), [T-192/06 Caffaro Srl v Commission](#), [T-194/06 SNIA SpA v Commission](#), [T-195/06 Solvay Solexis SpA v Commission](#), [T-196/06 Edison SpA v Commission](#), [T-197/06 FMC Corp. v Commission](#) (see also Press Release [61/11](#)).

The Court considers that the arguments put forward by Total and Elf Aquitaine were not substantiated by specific evidence of the independence of their subsidiary but consisted of mere assertions, which were manifestly not capable of constituting a sufficient body of evidence to rebut the presumption of imputability to the parent company. Consequently, the Court has decided that the Commission did not err in imputing to Total and Elf Aquitaine the unlawful conduct of their subsidiary.

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-189/06](#) and [T-190/06](#)) is published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355