



General Court of the European Union

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Judgments in Cases T-38/07 Shell Petroleum NV and Others; T-39/07 Eni SpA; T-42/07 The Dow Chemical Company and Others; T-44/07 Kaučuk a.s.; T-45/07 Unipetrol a.s.; T-53/07 Trade-Stomil sp. z o.o.; and T-59/07 Polimeri Europa SpA v Commission

Press and Information

The General Court annuls the Commission's decision concerning a cartel on the synthetic rubber market in so far as it concerns Unipetrol, its subsidiary Kaučuk and Trade-Stomil

In addition, the fine imposed jointly and severally on Eni and its subsidiary Polimeri Europa, originally €272.25 million, is reduced to €181.50 million

By decision of 29 November 2006¹, the Commission imposed fines totalling more than €519 million on 13 companies for their participation over various periods between 20 May 1996 and 28 November 2002 in a cartel on the market for butadiene rubber and emulsion styrene butadiene rubber (synthetic rubbers used essentially in tyre production).

The infringement identified by the Commission consisted in agreement on price targets, sharing of customers by non-aggression agreements and the exchange of sensitive information on prices, competitors and customers.

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

With regard to **Unipetrol, its subsidiary Kaučuk and Trade-Stomil**, the Court considers that the evidence admitted by the Commission is not sufficient for a finding that those companies participated in unlawful agreements. Even if some of the evidence may have a certain probative value, it is not sufficient. Therefore, the existence of a doubt by the Court as to the finding of the existence of an infringement with respect to those companies must operate to their advantage. **The Court** concludes that the Commission erred in finding that they participated in the cartel and, accordingly, **has decided to annul the decision in so far as it concerns Unipetrol, its subsidiary Kaučuk and Trade-Stomil.**

With regard to **Eni and its subsidiary Polimeri Europa**, the Court recalls that the Commission increased their basic fine by 50% for repeated infringement on account of their participation in two earlier cartels². The Court considers that the change in structure and control of the companies concerned was particularly complex and that the Commission did not produce enough detailed and specific evidence to be able to show that those companies had repeated an infringement. Consequently, the Court has decided to **reduce the original fine of €272.25 million imposed jointly and severally on Eni and its subsidiary Polimeri Europa to €181.50 million.**

As regards **Dow Deutschland**, the Court finds that it participated in the infringement over a shorter period than that determined by the Commission: from 2 September 1996 to 27 November 2001 instead of from 1 July 1996 to 27 November 2001. Consequently, the Commission's decision is annulled in that respect. However, the amount of the fine imposed remains the same since the

¹ Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 – Butadiene Rubber and Emulsion Styrene Butadiene Rubber).

² Commission Decision 86/398/EEC of 23 April 1986 relating to a proceeding under Article [81 EC] (IV/31.149 – Polypropylene) (OJ 1986 L 230, p. 1) and Commission Decision 94/599/EC of 27 July 1994 relating to a proceeding pursuant to Article [81 EC] (IV/31.865 – PVC) (OJ 1994 L 239, p. 1).

Commission's error cannot have any effect on the increase applied for the duration of the infringement.

Finally, **the Court rejects all the arguments put forward by the Shell group companies** in the Netherlands and, accordingly, has decided to maintain the fine of €160.88 million imposed on them.

Companies	Fines imposed by the Commission	Decision of the General Court
Shell Petroleum NV, Shell Nederland BV, Shell Nederland Chemie BV (Netherlands)	jointly and severally: €160.88 million	Action dismissed Fine upheld
The Dow Chemical Company (United States), Dow Deutschland Inc. (Germany), Dow Deutschland Anlagengesellschaft mbH (Germany), Dow Europe GmbH (Switzerland)	The Dow Chemical Company: €64.58 million, of which - €60.27 million jointly and severally with Dow Deutschland Inc.; - €47.36 million jointly and severally with Dow Deutschland Anlagengesellschaft mbH and Dow Europe GmbH	Commission's decision annulled in part in relation to Dow Deutschland Inc., without reduction of the fine
Kaučuk a.s. and Unipetrol a.s. (Czech Republic)	jointly and severally: €17.55 million	Commission's decision annulled Fine cancelled
Trade Stomil sp. z o.o. (Poland)	€3.8 million	Commission's decision annulled Fine cancelled
Eni SpA and Polimeri Europa SpA (Italy)	jointly and severally: €272.25 million	Fine reduced to €181.50 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-38/07](#), [T-39/07](#), [T-42/07](#), [T-44/07](#), [T-45/07](#), [T-53/07](#), and [T-59/07](#)) is published on the CURIA website on the day of delivery

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