



Press and Information

General Court of the European Union
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Judgment in Case T-234/07
Koninklijke Grolsch NV v Commission

The General Court annuls the €31.66 million fine imposed on Koninklijke Grolsch NV for its participation in a cartel on the Dutch beer market

By decision of 18 April 2007¹, the Commission imposed fines totalling more than €273 million on the main Dutch brewers², Heineken NV and its subsidiary – Heineken Nederland BV, Bavaria NV³ and Koninklijke Grolsch NV, for their participation in a cartel on the Dutch beer market from 27 February 1996 to 3 November 1999.

On that market the brewers sell their beer to end users mainly through two distribution channels: the “on-trade” segment (hotels, restaurants and cafés), where consumption is on the premises, and the “off-trade” segment (supermarkets and off-licences), where the beer is purchased for consumption at home.

The infringement found by the Commission consisted of the coordination of prices and price increases for beer and the allocation of customers, both in the on-trade segment and in the off-trade segment in the Netherlands, and the occasional coordination of other commercial conditions offered to individual on-trade customers in the Netherlands.

The Commission imposed a fine of €31.66 million on Koninklijke Grolsch NV.

That company subsequently brought an action before the General Court seeking annulment of the Commission’s decision or a reduction in its fine.

Koninklijke Grolsch NV in essence denied that it participated directly in the infringement. It argued that the employees of its wholly-owned subsidiary, Grolsche Bierbrouwerij Nederland BV, attended most of the meetings at issue and that consequently the Commission should not have found that Koninklijke Grolsch NV participated in the infringement but, if appropriate, should instead have attributed liability to it for an infringement committed by its subsidiary.

First of all, the Court considers certain documents concerning the meetings between the companies and concludes that **the evidence available to the Commission was not sufficient to establish the direct participation of Koninklijke Grolsch in the cartel.**

The Court goes on to observe that where, as in the present case, a decision concerns a number of addressees and raises a problem of attribution of liability for the infringement identified, it must include an adequate statement of reasons with respect to each of the addressees, in particular those of them who, according to the decision, must bear the liability for that infringement. Thus, in the case of a parent company held liable for the conduct of its subsidiary, such a decision must contain a detailed statement of reasons for attributing the infringement to that company.

¹ Commission Decision C (2007) of 18 April 2007 relating to a proceeding under Article 81 EC (Case COMP/B/37.766 — Dutch beer market) (OJ 2008 C 122, p. 1).

² The InBev group was granted immunity under the Commission’s leniency programme, since it had provided decisive information concerning the infringement.

³ The Commission had held Heineken NV and its subsidiary jointly and severally liable for a fine of €219.28 million and had fined Bavaria NV €22.85 million. By judgments of 16 June 2011 ([T-235/07](#) and [T-240/07](#)), the General Court reduced the fines to €198 million and €20.71 million, respectively (see Press Release No [62/11](#)).

According to settled case-law, in the specific case of a parent company holding 100% of the capital of a subsidiary which has committed an infringement of the competition rules, there is a rebuttable presumption that that parent company actually exercises decisive influence over the conduct of its subsidiary.

In those circumstances, it is sufficient for the Commission to show that the entire capital of a subsidiary is held by the parent company in order to presume that the parent company exercises decisive influence over the subsidiary's commercial policy. The Commission will then be able to hold the parent company jointly and severally liable for payment of the fine imposed on the subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to prove that its subsidiary acts autonomously on the market.

The Court states that, in the present case, the decision treated the parent company, Koninklijke Grolsch NV, and the Grolsch group as one and made no mention of the economic, organisational and legal links between the parent company and its subsidiary, whilst nowhere in the statement of reasons was the subsidiary's name mentioned. The Commission therefore failed to explain the reasons which led it to determine the legal person responsible for running the undertaking at the time when the infringement was committed, so as to enable that person to answer for the infringement or, as the case may be, rebut the presumption that the parent company actually exercised decisive influence over the conduct of its subsidiary.

The Court finds that **the Commission failed to explain, in the decision, its reasons for attributing to Koninklijke Grolsch NV the conduct of its subsidiary**, which followed from the participation of the subsidiary's employees in the meetings at issue. It thus denied the parent company any opportunity to reverse the presumption and thereby challenge the merits of that attribution before the Court and did not enable the Court to exercise its power of review in that regard.

Consequently, **the Court decides to annul the Commission's decision in so far as it concerns Koninklijke Grolsch NV.**

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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