



Press and Information

Court of Justice of the European Union

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Judgment in Case C-612/12 P
Ballast Nedam NV v Commission

The Court reduces Ballast Nedam's fine for the cartel on the road pavement bitumen market in the Netherlands from €4.65 million to €3.45 million

Ballast Nedam NV and its subsidiaries operate in the construction sector in the Netherlands. Since 1995, the group's road construction activities have been centralised in Ballast Nedam Grond en Wegen BV ('BNGW'), a wholly-owned subsidiary of Ballast Nedam Infra BV ('BN Infra'), itself wholly-owned by Ballast Nedam NV. From 1 October 2000 onwards, the construction activities of the Ballast Nedam Group have been carried out directly by BN Infra.

In 2006, the Commission imposed fines of €266.71 million on 14 undertakings for their participation in a cartel involving price-fixing on the road pavement bitumen market in the Netherlands¹.

Ballast Nedam NV was held liable for that infringement in respect of the period from 21 June 1996 to 15 April 2002, as was BN Infra, its subsidiary.

In view of BN Infra's direct participation in the infringement during the period from 1 October 2000 to 15 April 2002 and the fact that it wholly owned BNGW during the period from 21 June 1996 to 30 September 2000 and in view of Ballast Nedam NV's 100% direct and indirect shareholding in BN Infra and BNGW, a fine of €4.65 million was imposed jointly and severally on Ballast Nedam NV and BN Infra.

By judgment of 27 September 2012², the General Court dismissed Ballast Nedam NV's action for annulment. Ballast Nedam NV then brought an appeal before the Court of Justice.

In support of its appeal, Ballast Nedam NV alleged, inter alia, that the General Court infringed the rights of the defence, arguing that the General Court had erred in law by concluding, on the basis of the information contained in the statement of objections, that Ballast Nedam NV could not have been unaware that it was likely to be the addressee of a final Commission decision in its capacity as BNGW's parent company. In that regard, Ballast Nedam NV submits that, in the statement of objections, the Commission should have identified BNGW as an offender and should have expressly informed Ballast Nedam NV that it risked being held jointly and severally liable for the fine imposed on BNGW.

The Court notes that, according to the General Court's findings, the Commission did not provide any additional evidence in the statement of objections for the existence of a unitary undertaking between Ballast Nedam NV and BNGW and that, in that respect, the statement of objections could have been clearer. The Court notes that the General Court nevertheless stated that that lack of clarity in the statement of objections was not sufficient for the Commission to be held not to have clearly indicated its intention of applying the presumption that Ballast Nedam NV had actually exercised decisive influence over the commercial conduct of BN Infra and BNGW.

¹ Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)); see also European Commission press release IP 06/1179.

² Case [T-361/06](#) *Ballast Nedam NV v Commission*. On the same day, the General Court reduced the fine from €4.65 million to €3.45 million in Case [T-362/06](#) *Ballast Nedam Infra BV v Commission*.

The Court finds, however, that the General Court erred in law in finding that Ballast Nedam NV's rights of the defence had not been infringed. It is necessary for the Commission to indicate in the statement of objections in which capacity an undertaking is called upon to answer the allegations. Moreover, the ambiguity in the wording of the statement of objections is exacerbated by the fact that no statement of objections was sent to BNGW.

The Court therefore sets aside the judgment of the General Court as regards the imputation of BNGW's conduct to Ballast Nedam NV for the period from 21 June 1996 to 30 September 2000.

As regards the fine imposed jointly and severally on Ballast Nedam NV, the Court observes that, in respect of BN Infra's conduct, for which the contested decision also held Ballast Nedam NV liable, the General Court had definitively reduced the fine to €3.45 million, stating that BNGW's conduct for the period from 21 June 1996 to 1 October 2000 could not be imputed to BN Infra.

In those circumstances, the Court sets the fine imposed jointly and severally on Ballast Nedam NV at €3.45 million.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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