

Daesang Corp. and Sewon Europe GmbH

v

Commission of the European Communities

(Competition — Cartel — Lysine — Guidelines for calculating the amount of fines — Turnover — Mitigating circumstances — Cooperation during the administrative procedure)

Judgment of the Court of First Instance (Fourth Chamber), 9 July 2000 . . . II - 2737

Summary of the Judgment

1. *Competition — Fines — Amount — Determination thereof — Guidelines adopted by the Commission — Obligation on the Commission to comply with them*
(Council Regulation No 17, Art. 15(2))
2. *Competition — Fines — Amount — Determination thereof — Criteria — Seriousness of the infringements — Taking into account of the total turnover of the undertaking concerned and the turnover achieved by sales of goods which were the subject-matter of the infringement — Limits*
(Council Regulation No 17, Art. 15(2))

3. *Competition — Fines — Amount — Determination thereof — Criteria — Seriousness of the infringements — Measure of the effective capacity to cause damage on the relevant market — Relevance of the market share held by the undertaking concerned* (Art. 81(1) EC; Council Regulation No 17, Art. 15(2))
4. *Competition — Fines — Amount — Determination thereof — Criteria — Seriousness of the infringements — Measure of the actual impact on competition of the infringing conduct of each undertaking — Relevance of the turnover achieved with the products forming the subject-matter of a restrictive practice* (Art. 81(1) EC; Council Regulation No 17, Art. 15(2))
5. *Competition — Fines — Amount — Determination thereof — Criteria — Cooperation of the undertaking during the administrative procedure — Reduction of the fine — Request for information — Investigation — Relevance* (Council Regulation No 17, Arts 11 and 15)
6. *Competition — Fines — Amount — Determination thereof — Method of calculation defined by guidelines laid down by the Commission — Application of percentages to the basic amount of the fine* (Council Regulation No 17, Art. 15(2))

1. The Commission may not depart from rules which it has imposed on itself. In particular, whenever it adopts guidelines for the purpose of specifying, in accordance with the Treaty, the criteria which it proposes to apply in the exercise of its power to assess the seriousness of an infringement, there arises a self-imposed limitation of that discretion inasmuch as it must then follow those guidelines.
2. The criteria for assessing the seriousness of an infringement of Community competition rules may include the volume and value of the goods in respect of which the infringement was committed, the size and economic power of the undertaking and, consequently, the influence which it was able to exert on the market. It follows that, on the one hand, it is permissible, for the purpose of fixing a fine, to have regard both to the total turnover of the undertaking, which gives an indication, albeit approximate and imperfect, of the size of the undertaking and of its economic power, and to the proportion of that turnover accounted for by the goods in respect of which the infringement was committed, which gives an indication of the scale of the infringement. On the other hand, it follows

(see paras 38, 89)

that it is important not to confer on one or other of those figures an importance which is disproportionate in relation to other factors and that the fixing of an appropriate fine cannot be the result of a simple calculation based on total turnover.

(see para. 44)

3. When determining the amount of fines imposed for infringement of Community competition rules, assessment of the effective capacity of the undertakings concerned to cause significant damage to a given market implies an assessment of the real importance of the undertakings on the market affected, that is to say their influence on it. For that purpose, an undertaking's share of the affected market is relevant, whereas its total turnover is not.

(see para. 49)

which the Commission must now carry out by virtue of the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty where it considers that the starting amounts of the fines must be weighted because the infringement is one that involves several undertakings (a cartel) among which there is considerable disparity in size, involves establishing the scale of the infringement committed by each of them, rather than the importance of the undertaking in question in terms of its size or economic power. In that regard, the proportion of turnover derived from the sale of goods in respect of which the infringement was committed is likely to give a fair indication of the scale of the infringement on the relevant market. In particular, the turnover in products which have been the subject of a restrictive practice constitutes an objective criterion which gives a proper measure of the harm which that practice causes to normal competition.

(see paras 50, 52)

4. When determining the amount of fines imposed for infringement of Community competition rules, an assessment of the specific weight, that is to say of the real impact of the infringement committed by each of the undertakings,
5. Cooperation in an investigation by the Commission into a possible infringement of Community competition rules which does not go beyond that which undertakings are required to provide under Article 11(4) and (5) of Regu-

lation No 17 does not justify a reduction in the fine. A reduction in the fine is justified, however, where an undertaking provides the Commission with information well in excess of what the Commission may require under Article 11 of Regulation No 17.

The fact that the Commission has sent a request for information to an undertaking which has cooperated, pursuant to Article 11(1) of Regulation No 17, cannot of itself exclude the possibility of a substantial reduction of between 50 and 75% of the fine, pursuant to Section C of the Leniency Notice, particularly as a request for information is a less coercive measure than an investigation ordered by decision. Such an investigation does not in itself necessarily exclude the application of Section C of the Leniency Notice if it does not provide sufficient grounds for initiating the procedure leading to a decision for infringement of the competition rules.

6. Given the wording of the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty, any percentage increases or reductions decided upon to reflect aggravating or mitigating circumstances must be applied to the basic amount of the fine set by reference to the seriousness and duration of the infringement, not to any increase already applied for the duration of the infringement or to the figure resulting from any initial increase or reduction to reflect aggravating or mitigating circumstances. That method for calculating fines ensures equal treatment between the various undertakings involved in a cartel.

(see paras 136-137, 140-141)

(see para. 152)