

Case T-354/94

Stora Kopparbergs Bergslags AB

v

Commission of the European Communities

(Competition — Article 85(1) of the EC Treaty (now Article 81(1) EC) —
Liability for an infringement — Fine — Appeal — Case referred back
to the Court of First Instance)

Judgment of the Court of First Instance (First Chamber, Extended Composition), 28 February 2002 II- 846

Summary of the Judgment

1. *Competition — Community rules — Infringements — Attribution of responsibility — Legal person responsible for the operation of the undertakings at the material time — Imputability to the acquirer of the undertakings — None*
(EC Treaty, Art. 85(1) (now Art. 81(1) EC))

2. *Competition — Fines — Amount — Determination thereof — Principle of equal treatment — Same method for undertakings which participated in an agreement (Council Regulation No 17, Art. 15(2))*
3. *Competition — Fines — Amount — Reduction in fine in exchange for cooperation — Actions for annulment — Fresh review of the size of the reduction — Excluded (Council Regulation No 17, Art. 15)*

1. The fact that an acquirer is aware that the undertakings acquired participated in an infringement before their acquisition does not suffice to impute to it the unlawful conduct prior to that acquisition. That circumstance, namely that the acquirer was not unaware of the infringements of the undertakings acquired, is not in itself such as to render inapplicable the rule that 'it falls, in principle, to the legal or natural person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, at the time of the decision finding the infringement, another person had assumed responsibility for operating the undertaking'. The rule must be understood to mean that it falls, in principle, to the 'legal person' managing the undertakings before their acquisition to answer for the infringement which they committed during that period. It follows that the existence, on the date of the decision imposing fines, of the legal person which managed the operations of the undertakings in question is sufficient

for responsibility for their action not to be imputable to the acquirer.

(see paras 60, 70)

2. In accordance with the principle of equal treatment, it is necessary to determine the amount of the fines imposed on undertakings which have participated in an agreement or concerted practice contrary to Article 85(1) of the Treaty (now Article 81(1) EC) according to the same method, unless objective justification for not following that method is advanced.

(see para. 78)

3. The risk that an undertaking which has been granted a reduction in its fine in exchange for its cooperation will subsequently seek annulment of the decision finding the infringement of the competition rules and imposing a penalty on the undertaking responsible for the infringement, and will succeed before the Court of First Instance or before the Court of Justice on appeal, is a normal consequence of the exercise of the remedies provided for in the Treaty and the Statute. Accordingly, the mere fact that an undertaking

which has cooperated with the Commission and which for that reason has been given a reduction in the amount of its fine has successfully challenged the decision before the Community judicature cannot justify a fresh review of the size of the reduction granted to it.

(see para. 85)