

Pleas in law and main arguments

The appeal contains four pleas. According to the first plea, the General Court erred in law by assuming that the Commission does not have to exercise its discretion properly and by not exercising the full scope of judicial review with regard to the exercise of the Commission's discretion in holding The Dow Chemical Company liable. According to the second plea, the General Court erred in law with respect to the differential treatment applied to the starting amounts of the fine. According to the third plea, the General Court erred in law by confirming that the Commission was entitled to take The Dow Chemical Company's turnover into account. According to the fourth plea, the General Court erred in law by confirming that the Commission's application of the deterrence multiplier is not discriminatory.

Appeal brought on 7 October 2011 by ThyssenKrupp Liften Ascenseurs NV against the judgment delivered by the General Court (Eighth Chamber) on 13 July 2011 in Joined Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07 ThyssenKrupp Liften Ascenseurs and Others v European Commission

(Case C-516/11 P)

(2011/C 355/19)

Language of the case: Dutch

Parties

Appellant: ThyssenKrupp Liften Ascenseurs NV (represented by: O.W. Brouwer and J. Blockx, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

- set aside the judgment under appeal of the General Court of 13 July 2011 in so far as the General Court rejected the pleas put forward by the appellant at first instance;
- give judgment in this case and annul Commission Decision C(2007) 512 final ⁽¹⁾ of 21 February 2007 in Case COMP/E-1/38.823 — Elevators and Escalators on the basis of the relevant pleas put forward at first instance and/or reduce the fine imposed on ThyssenKrupp Liften Ascenseurs NV;
- in the alternative, reduce the fine imposed on the appellant;
- in the further alternative, refer the case back to the General Court;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant puts forward four grounds in support of its appeal.

1. Infringement of Article 81(1) (now Article 101(1)) EC since the infringements are not capable of appreciably affecting trade between Member States and the Commission unlawfully initiated the investigation procedure.
2. Breach of the *ne bis in idem* principle.
3. Infringement of Article 23 of Regulation 1/2003, ⁽²⁾ Articles 48(1) and 49(1) and (3) of the Charter of Fundamental Rights of the European Union and of the principle that penalties must fit the offence on account of the confirmation of the appellant's joint and several liability for the entire amount of the fine calculated on the basis of the group turnover.
4. Error of assessment and unlawful omission by the General Court, in so far as it failed to make any use of its unlimited jurisdiction in the area of fines, inter alia as regards the extent of the market concerned, the multiplier for deterrence and the cooperation in and outside the context of the 2002 Leniency Notice.

⁽¹⁾ Summary in OJ 2008 C 75, p. 19.

⁽²⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Appeal brought on 11 October 2011 by ThyssenKrupp Liften BV against the judgment delivered by the General Court (Eighth Chamber) on 13 July 2011 in Joined Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07 ThyssenKrupp Liften Ascenseurs and Others v European Commission

(Case C-519/11 P)

(2011/C 355/20)

Language of the case: Dutch

Parties

Appellant: ThyssenKrupp Liften BV (represented by: O.W. Brouwer, N. Lorjé, N. Al-Ani, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

- set aside the judgment under appeal of the General Court of 13 July 2011 in so far as the General Court rejected the pleas put forward by the appellant at first instance;
- give judgment in this case and annul Commission Decision C(2007) 512 final ⁽¹⁾ of 21 February 2007 in Case COMP/E-1/38.823 — Elevators and Escalators on the basis of the relevant pleas put forward at first instance and/or reduce the fine imposed on the appellant;