

Case T-31/99

ABB Asea Brown Boveri Ltd

v

Commission of the European Communities

(Competition — Cartel — District heating pipes — Article 85 of the EC Treaty (now Article 81 EC) — Principle of sound administration — Fine — Guidelines on the method of setting fines — Legitimate expectations)

Judgment of the Court of First Instance (Fourth Chamber), 20 March 2002 II - 1884

Summary of the Judgment

1. *Competition — Administrative procedure — Commission decision finding an infringement — Effect on the validity of the decision of a breach of the principle of sound administration by one of the officials investigating the case — None — Justification*

2. *Competition — Administrative procedure — Commission decision finding an infringement — Effect on the validity of the decision of acts subsequent to its adoption but preceding its notification — None*
3. *Competition — Administrative procedure — Commission's premature display of its belief as to the existence of an infringement — Effect on the reality of evidence of the infringement subsequently adduced — None*
4. *Competition — Fines — Amount — Determination thereof — Criteria — Gravity of the infringements — Mitigating circumstances — Whether Commission obliged to abide by its previous decision-making practice — No such obligation (Council Regulation No 17, Art. 15(2))*
5. *Competition — Fines — Amount — Reduction of the fine in return for cooperation by the undertakings involved — Whether Commission obliged to observe the principle of equal treatment (Council Regulation No 17, Art. 15(2))*

1. The guarantees conferred by the Community legal order in administrative proceedings include, in particular, the principle of sound administration, the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case.

the official in question but by the College of Commissioners.

(see paras 99, 104)

In that regard, regrettable conduct on the part of a member of the team dealing, within the Commission, with a case of infringement of the competition rules does not in itself vitiate the legality of the decision adopted in that case. Even if that official did infringe the principle of sound administration, the contested decision was not adopted by

2. Acts subsequent to the adoption by the Commission of a decision imposing a penalty for infringement of the competition rules cannot affect its validity. That applies to the pejorative remark about the reputation of the undertaking concerned made by a member of the team investigating the case, in breach of the principle of sound administration, where the Commission decision, although not yet served on

the undertaking, has already been adopted.

(see para. 103)

3. When it is established that an undertaking has been involved in a cartel at the level of the group to which it belongs, even evidence of a premature manifestation by the Commission, during the administrative procedure, of its conviction that the group in question was involved is not of such a kind as to deprive the actual evidence of such involvement of its reality.

(see para. 106)

4. In the determination of the amount of the fine to be imposed for an infringement of the competition rules, the mere fact that the Commission has in its previous decisions granted a certain rate of reduction of the fine for specific conduct does not imply that it is required to grant the same proportionate reduction when assessing similar

conduct in a subsequent administrative procedure.

(see para. 239)

5. The principle of equal treatment prevents comparable situations from being treated differently and different situations from being treated in the same way, unless such difference in treatment is objectively justified.

The Commission does not observe that principle when, after having expressly recognised in the decision imposing a fine for infringement of the competition rules that an undertaking distinguished itself from the other undertakings involved by not disputing the main facts, did not differentiate the reduction to be granted to that undertaking for its cooperation during the investigation from the reductions granted to the other undertakings.

(see paras 240, 242-244)