



Reports of Cases

Judgment of the General Court (Fourth Chamber) of 6 March 2012 — FLS Plast v Commission

(Case T-64/06)

(Competition — Agreements, decisions and concerted practices — Plastic industrial bags sector — Decision finding an infringement of Article 81 EC — Duration of the infringement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality — Joint and several liability — Principle of ne bis in idem)

1. *EU competition rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Presumption of decisive influence exercised by the parent company over its wholly-owned subsidiaries — Evidential obligations of a company seeking to rebut that presumption (Art. 81(1) EC) (see paras 26-31, 52-55, 65, 76)*
2. *Competition — Agreements, decisions and concerted practices — Participation in meetings of undertakings having an anti-competitive object — Circumstances from which, where the undertaking concerned has not distanced itself from the decisions adopted, it may be concluded that it participated in the ensuing cartel — Representative of an undertaking not informing the latter of the anti-competitive nature of the meetings — No effect (Art. 81(1) EC) (see paras 68-69)*
3. *Competition — Fines — Assessment by reference to the individual conduct of the undertaking — Irrelevant that another economic operator not penalised (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2)) (see para. 88)*
4. *Competition — Fines — Amount — Determination — Criteria — Undertaking transferred several times during the infringement — Succession of several parent companies — Imputation to each parent company of the same starting amount — Joint and several liability of the parent companies for a total amount exceeding the amount of the fine imposed on the subsidiary — Lawfulness (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2); Commission Notice 98/C 9/03) (see paras 99-102)*
5. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Passive or 'follow-my-leader' role of the undertaking — Criteria for assessment (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2); Commission Notice 98/C 9/03, Section 3, first indent) (see paras 124-127)*

6. *Competition — Fines — Amount — Determination — Maximum amount — Calculation — Turnover to be taken into consideration — Cumulative turnover of all the companies constituting the economic unit acting as an undertaking — Limits (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2); Commission Notice 98/C 9/03, Section 5) (see paras 135-138, 140)*
7. *Competition — Fines — Amount — Determination — Criteria — Deterrent effect — Deterrent effect on both the undertaking in breach and third parties — Possibility of fining an undertaking no longer active on the market concerned at the date of the decision (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 146-147)*
8. *Competition — Fines — Amount — Determination — Non-imposition or reduction of the fine for cooperation of the undertaking concerned — Conditions — Parent company and subsidiaries — Individual assessment of the cooperation of those companies (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2); Commission Notice 96/C 207/04, Title D, Section 2) (see paras 163-166, 168-176)*

Re:

APPLICATION for the partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

Operative part

The Court:

1. Annuls Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) in so far as it holds FLS Plast A/S liable for the single and continuous infringement referred to in Article 1(1) thereof, for the period from 31 December 1990 to 31 December 1991;
2. Sets the amount for payment of which FLS Plast is held jointly and severally liable under Article 2(f) of Decision C(2005) 4634 at EUR 14.45 million;
3. Dismisses the action as to the remainder;
4. Orders the European Commission and FLS Plast each to bear their own costs.