

Case T-234/07

Koninklijke Grolsch NV

v

European Commission

(Competition — Agreements, decisions and concerted practices — Netherlands beer market — Decision finding a single and continuous infringement of Article 81 EC — Applicant found to have participated in the infringement — Insufficient evidence — No statement of reasons)

Judgment of the General Court (Sixth Chamber, Extended Composition),
15 September 2011 II - 6173

Summary of the Judgment

1. *Actions for annulment — Admissibility — Natural or legal persons — Obligation on an undertaking which is an addressee of a statement of objections to challenge the matters of fact or law during the administrative procedure — Restriction of the exercise of the right to bring proceedings — Infringement of the fundamental principles of the rule of law and of respect for the rights of the defence*
(Arts 81 EC, 82 EC and 230, fourth para., EC)
2. *Competition — Agreements, decisions and concerted practices — Evidence — Single and continuous infringement resulting from a complex system of concerted actions*
(Art. 81(1) EC)

3. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision applying competition rules — Decision relating to several addressees*
(Arts 81 EC and 253 EC)

4. *Competition — European Union rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Rebuttable presumption that a parent company exercises decisive influence over its wholly-owned subsidiaries*
(Arts 81 EC and 82 EC; Council Regulation No 1/2003, Art. 23(2))

1. In the field of the competition rules, there is no provision of Union law that requires the addressee of a statement of objections to contest individual matters of fact or of law in it during the administrative procedure, failing which it will no longer be able to do so subsequently during the judicial proceedings. Although an undertaking's express or implicit acknowledgement of matters of fact or of law during the administrative procedure before the Commission may constitute additional evidence when determining whether an action is well founded, it cannot restrict the actual exercise of a natural or legal person's right to bring proceedings before the General Court under the Treaty.

In the absence of a specific legal basis, such a restriction is contrary to the fundamental principles of the rule of law and of respect for the rights of the defence.

The right to an effective remedy and of access to an impartial tribunal are, moreover, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

(see paras 37-38, 40)

2. In the field of the competition rules, in the case of a single and continuous infringement consisting of the coordination of prices and of price increases for a particular product in a Member State resulting from a complex system of concerted actions undertaken by the undertakings concerned, isolated evidence of an undertaking's participation in that coordination is not sufficient to establish the participation of that undertaking in the infringement. The attendance by

the chair of the board of directors of the undertaking in question at one meeting relating to a single segment of the market at issue constitutes isolated evidence.

(see paras 63, 65-67, 71)

the subsidiary, the Commission thereby fails to set out the reasons for imputing to the undertaking in question the conduct at issue of its subsidiary. The Commission thus deprives the undertaking of the possibility to contest the validity of that imputation before the General Court by rebutting the presumption that a parent company in fact exercises decisive influence over the conduct of its subsidiary and the Commission does not put the General Court in a position such as to enable it to exercise its review in that regard.

3. Where a decision applying Article 81 EC relates to several addressees and raises a problem of imputing liability for the infringement established, it must include an adequate statement of reasons with respect to each of the addressees, in particular those of them who, according to the decision, must bear the liability for the infringement.

(see paras 77-78, 88-91)

Thus, with regard to a parent company held liable for the behaviour of its subsidiary, such a decision must contain a detailed statement of reasons for imputing the infringement to that company.

In that context, where the Commission's decision finding an infringement of the competition rules ignores the economic, organisational and legal links existing between the undertaking in question and its subsidiary and its account of the facts makes no mention of the name of

4. The conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities. In those circumstances, the parent company and the subsidiary form the same economic unit and, accordingly, form a single undertaking. Thus, the fact that a parent company and its subsidiary constitute a single undertaking within the meaning of Article 81 EC enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement.

In the particular case of a parent company having a 100% shareholding in a subsidiary which has infringed the rules on competition, the parent company is able to exercise decisive influence over the conduct of its subsidiary, and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of the subsidiary. In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent exercises a decisive influence over the commercial policy of the subsidiary. The Commission will be able to

regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market.

(see paras 80-83)