



Reports of Cases

Order of the Court (Seventh Chamber) of 2 February 2012 — Elf Aquitaine v Commission

(Case C-404/11 P)

(Appeal — Regulation (EC) No 1/2003 — Competition — Cartel — Sodium chlorate market — Concept of an ‘undertaking’ — Presumption of decisive influence — Scope of that presumption — Factors not capable of rebutting the presumption — Personal fine — Unlimited jurisdiction)

1. *Appeals — Grounds — Specific criticism of a point of the General Court’s reasoning necessary (Art. 256 TFEU; Statute of the Court of Justice, Art. 58; Rules of Procedure of the Court of Justice, Art. 112(1)(c)) (see paras 15, 29, 64, 76, 78, 82)*
2. *Competition — Union rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Presumption that a parent company wields decisive influence over its wholly-owned subsidiaries (Art. 101 TFEU; Council Regulation No 1/2003, Art. 23(2)) (see paras 23, 26, 28, 31, 36, 45-47, 57)*
3. *Appeals — Grounds — Plea submitted for the first time in the context of the appeal — Inadmissibility (Rules of Procedure of the Court of Justice, Art. 113(2)) (see paras 33, 64, 72)*
4. *Competition — Fines — Amount — Determination — Deterrent effect of the fine — Necessary to fix an amount greater than the profit made from the infringement and to take into consideration the undertaking’s power (Art. 101 TFEU; Council Regulation No 1/2003, Art. 23; Commission communication 2006/C 210/02, para. 30) (see para. 86)*
5. *Appeals — Jurisdiction of the Court — Challenge on grounds of fairness to the General Court’s assessment concerning the amount of a fine imposed on an undertaking — Excluded (Art. 101 TFEU; Statute of the Court of Justice, Art. 58; Council Regulation No 1/2003, Art. 23) (see para. 90)*

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 17 May 2011 in Case T-299/08 *Elf Aquitaine v Commission*, by which that court dismissed the action brought by the applicant for annulment of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate) — Competition — Cartel — Infringement of the principle that the

institutions must act within the limits of their powers and of the principle of proportionality — Manifestly erroneous interpretation — Infringement of the rights of the defence and of the principles of equity and of equality of arms — Duty to state reasons — Illegality of the personal fine.

Operative part

1. The appeal is dismissed.
2. Elf Aquitaine SA is ordered to pay the costs.