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Press and Information

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Judgments of the Court of Justice in Cases C-12/03 P and C-13/03 P

Commission of the European Communities v Tetra Laval BV

**THE APPEAL AGAINST THE JUDGMENT OF THE COURT OF FIRST INSTANCE
ANNULING THE DECISION OF THE EUROPEAN COMMISSION PROHIBITING
THE MERGER OF TETRA LAVAL AND SIDEL IS DISMISSED**

*The Court of First Instance observed the criteria to be applied by the Community Courts in
the exercise of their power of judicial review*

In October 2001, the European Commission prohibited a merger between Tetra Laval BV, which belongs to a group which has a dominant position worldwide in the sector of carton drinks packaging, and Sidel SA, the leading company in the production of equipment for polyethylene terephthalate (PET) drinks packaging.¹

According to the Commission, that merger would have encouraged Tetra Laval to use its dominant position on the carton-packaging market to persuade its customers on that market who are switching to PET for certain sensitive products (milk, fruit juices, still drinks, tea and coffee drinks) to choose Sidel's SBM machines² and would thereby have turned Sidel's leading position into a dominant position. Moreover, the merger would have strengthened Tetra Laval's already dominant position on the carton-packaging market. By a second decision of January 2002, the Commission therefore ordered the separation of the two companies, with a view to restoring conditions of effective competition.

Ruling on actions brought by Tetra Laval, the Court of First Instance of the European Communities annulled the two decisions by judgments of 25 October 2002³ on the ground that the Commission had committed manifest errors of assessment.

The Commission subsequently brought appeals against the Court of First Instance's judgments before the Court of Justice of the European Communities.

¹ Decision 2004/124/EC (OJ 2004 L 43, p. 13).

² "Stretch blow moulding" machines used to produce PET bottles.

³ Cases T-5/02 and T-80/02. See Press Release No 87/2002 of 25 October 2002.

In its judgments delivered today, the **Court of Justice dismisses the appeals** and holds that:

- **The Court of First Instance observed the criteria to be applied in the exercise of the power of judicial review conferred on the Community Courts** and properly explained why the evidence submitted in support of the Commission's arguments was insufficient, incomplete, insignificant, inconsistent and therefore inaccurate. The fact that the Commission enjoys discretion in economic matters does not mean that the Community Courts must refrain from reviewing the Commission's interpretation of information of an economic nature, especially in the context of a prospective analysis;
- The Court of First Instance rejected the Commission's conclusions as to the adoption by the merged entity Tetra Laval-Sidel of potentially unlawful conduct which might lead to leveraging. **It thereby erred in law. Nevertheless**, that error cannot invalidate its judgment. **The annulment of the Commission's decision was based on its refusal to take account of the commitments entered into by Tetra Laval with respect to its future conduct;**
- **The other grounds of appeal** – definition of the markets, distortion of the facts and arguments relating to the strengthening of the dominant position on the carton market and the creation of a dominant position on the market for SBM machines – **are rejected, either as unfounded or because they concerned the Court of First Instance's assessment of the evidence. Such an assessment is not subject to review by the Court in appeal proceedings, which are limited to questions of law.**

Languages available: FR, DE, EN, ES, IT, PL

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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