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Press and Information

PRESS RELEASE No 60/05

28 June 2005

Judgment of the Court of Justice in Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P

*Dansk Rørindustri A/S, Henss/Isoplus group (Isoplus Fernwärmetechnik Vertriebsgesellschaft mbH, Isoplus Fernwärmetechnik Gesellschaft mbH, Isoplus Fernwärmetechnik GmbH), KE KELIT Kunststoffwerk GmbH, LR AF 1998 A/S, Brugg Rohrsysteme GmbH, LR AF 1998 (Deutschland) GmbH, ABB Asea Brown Boveri Ltd v
Commission of the European Communities*

**THE COURT OF JUSTICE UPHOLDS THE JUDGMENTS OF THE COURT OF
FIRST INSTANCE CONCERNING A CARTEL ON THE EUROPEAN DISTRICT
HEATING MARKET**

The Court adjudicates on what was alleged to be the retroactive application of the Commission's Guidelines on the method of setting fines and also on certain complaints relating to the lawfulness of those Guidelines.

Community law prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market (Article 81 EC).

Following a complaint by the Swedish undertaking Powerpipe AB, the Commission carried out certain investigations and in 1998 adopted a decision in which it found that a number of undertakings had participated in a series of prohibited agreements and practices in the European district heating market; those undertakings produce, or market, pre-insulated pipes intended for district heating. According to the Commission, four Danish producers concluded a general cooperation agreement on their national market in late 1990 and two German producers regularly participated in their meetings from autumn 1991. The negotiations culminated in 1994 in an agreement designed to fix quotas for the whole of the European market. Those quotas were allocated by the 'directors' club' (consisting of the chairmen or managing directors of the undertakings participating in the cartel) to each undertaking, both at European level and at national level.

The Commission imposed fines totalling ECU 92 210 000 on the companies which had participated in the cartel.

Following the actions brought by eight of the ten undertakings concerned by the Commission's decision, **the Court of First Instance,¹ in particular, reduced the fine imposed on ABB Asea Brown Boveri Ltd² and essentially dismissed the actions for annulment of the decision.**

Seven undertakings then appealed to the Court of Justice of the European Communities.

They put forward a number of pleas in law, concerning **certain breaches of the Rules of Procedure of the Court of First Instance, the imputability of the infringement, the determination of the amount of the fines and also breach of the right to be heard and of the obligation to state reasons.**

In the judgment delivered today, the Court of Justice **rejects all of those arguments and therefore upholds the judgments of the Court of First Instance.**

In its judgment, the Court adopts, in particular, a position on the application of the Commission's Guidelines on the method of setting fines³ to infringements, such as those in the present case, which were committed before the Guidelines were adopted. The Court holds that such an application is not contrary to the principles of protection of legitimate expectations and non-retroactivity. It finds that the Guidelines and, in particular, the new method of calculating fines contained therein were reasonably foreseeable for undertakings, such as the appellants, at the time when the infringements concerned were committed. The Court also rejects a series of complaints relating to the legality of the method of calculating the amount of the fines as laid down in the Guidelines or applied in the Commission's decision.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DA, DE, EN, FR

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.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

¹ In the judgments of 20 March 2002 in Cases T-21/99, T-9/99, T-17/99, T-23/99, T-15/99, T-16/99 and T-31/99.

² The Court of First Instance decided to reduce the fine to EUR 65 000 000, as ABB had not disputed its participation in the cartel and had cooperated by providing evidence to the Commission after receiving the statement of objections.

³ Commission Notice entitled "Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty", published in the *Official Journal of the European Communities* on 14 January 1998 (OJ 1998 C 9, p. 3).