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Press and Information

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Judgment of the Court of First Instance in Case T-38/02

Groupe Danone v Commission of the European Communities

THE COURT OF FIRST INSTANCE CONFIRMS THE COMMISSION'S DECISION THAT THERE WAS A CARTEL CONTRARY TO COMMUNITY LAW IN THE BELGIAN BEER MARKET

However, it rules that the Commission was wrong to find that there were aggravating circumstances with respect to Danone, and therefore reduces the fine from EUR 44 043 000 to EUR 42 412 500.

Under Regulation No 17 of the Council,¹ the Commission can impose fines on undertakings and associations of undertakings if they infringe the rules of Community competition law. The amount of such a fine may be up to 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement.

At the material time Interbrew and Alken-Maes, the latter as a subsidiary of the Danone group, were the largest and second-largest operators in the Belgian beer market. Danone also operated in the French beer market.

On 5 December 2001 the Commission adopted a decision finding that those three companies had participated in a cartel in the field of beer sold in Belgium. In that connection Danone was held liable both for its own participation and for that of Alken-Maes in the cartel, and the Commission fined it EUR 44 043 000. In determining the amount of the fine, the Commission found as an aggravating circumstance that Danone had brought pressure to bear on Interbrew by threatening to expel it from the French market if it refused to grant Danone a sales quota of 500 000 hectolitres of beer in the Belgian market. According to the Commission, there was a causal link between that threat and the development of Interbrew's anticompetitive attitude.

Danone asked the Court of First Instance to annul the Commission's decision and, in the alternative, to reduce the amount of its fine.

¹ Regulation (EEC) No 17 of the Council of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty.

In today's judgment the Court of First Instance dismisses Danone's application almost entirely.

However, as regards the aggravating circumstance of Danone having forced Interbrew to extend their collaboration, the Court finds that the Commission **did not prove to the required legal standard** that there was **a causal link** between the threat that was made and the extension of the cartel. The causes of that extension cannot be reduced to a threat but derive from the aim of eliminating competition pursued together by both parties to the cartel. Consequently, the Commission **was wrong** to find that aggravating circumstance proved against Danone.

Since that error of assessment has consequences for the total amount of the fine to be imposed, the Court reduces Danone's fine to **EUR 42 412 500**.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

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

Languages available: DE EN ES FR GR IT NL

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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