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Press and Information

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Judgments of the Court of First Instance in Cases T-33/02, T-52/02, T-62/02 and T-64/02

*Britannia Alloys & Chemicals Ltd, Société nouvelle des couleurs zinciques SA (SNCZ), Union Pigments AS and Dr Hans Heubach GmbH & CO KG v
Commission of the European Communities*

THE COURT OF FIRST INSTANCE DISMISSES THE APPLICATIONS FOR ANNULMENT OR REDUCTION OF FINES IMPOSED BY THE COMMISSION ON MEMBERS OF A CARTEL IN THE ZINC PHOSPHATE MARKET

*In view of the gravity and duration of the infringement, the Court considers that the fines
were justified and were calculated in an appropriate manner*

By a decision dated 11 December 2001,¹ the Commission imposed fines totalling EUR 11.95 million on six European undertakings, producing and selling zinc-based products frequently used in the paint industry, for an infringement of Community competition law.

The Commission considered that a cartel involving the companies Britannia (Trident as from 15 March 1997), Heubach, James Brown, SNCZ and Union Pigments existed between 24 March 1994 and 13 May 1998. The cartel, which was limited to standard zinc phosphate, gave rise to an agreement on market sharing and sales quotas. It also involved the fixing of "base" or "recommended" prices and the allocation of customers.

Four of the six undertakings have brought an appeal against the Commission's decision before the Court of First Instance. They do not deny their participation in the cartel, but instead seek annulment or reduction of the fines imposed.

In the judgments delivered by it today, the Court of First Instance rejects all the pleas put forward by these undertakings, in particular the allegations of infringement, firstly, of Regulation No 17² regarding the method of calculating fines and, second, of the general principles of proportionality, equal treatment, non-discrimination, legal certainty and non-retroactivity.

¹ Decision 2003/437/EC relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/37.027 - Zinc phosphate) (OJ 2003, L 153, p. 1)

² Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87)

The Court of First Instance thus confirms the Commission's assessment. The infringement was properly classified as "very serious", having regard to the nature of the conduct involved, its actual impact on the market, and the fact that it covered the entire common market and, after its creation, the European Economic Area (EEA). In addition, the Commission was entitled to conclude that the undertakings concerned had participated in the cartel for more than four years. The "differential treatment" applied to the undertakings concerned in the calculation of the fines was justified by virtue of the principle that fines and penalties should be appropriate to the infringement, and in order both to take account of the actual economic capacity of each undertaking, and to ensure a sufficient deterrent effect.

More specifically, in the *Britannia* case, the applicant referred to Article 15(2) of Regulation No 17, according to which the final amount of the fine may not exceed 10% of the turnover achieved in the business year preceding the decision imposing the fine. At that time, the applicant was a non-trading company, having sold its business in the zinc sector to another company. Since its turnover in the business year prior to the decision was therefore nil, the Court held that it could not serve as a basis for determining the upper limit provided for by the regulation. According to the Court, it is clear both from the objectives of the system of which Article 15(2) of Regulation No 17 forms part, and from the case-law, that application of the upper limit of 10% presupposes, first, that the Commission has at its disposal the turnover for the last financial year preceding the date of adoption of the decision and, second, that this data represents a full year of normal economic activity over a period of 12 months. Accordingly, **the Commission was obliged, in setting the upper limit for the fine, to rely on the most recent turnover corresponding to a complete year of economic activity.** In the present case, the Commission was entitled to set the upper limit by reference to the business year ending 30 June 1996.

Consequently, the Court of First Instance dismissed the applications for annulment and amendment of the applicants' fines.

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: EN FR DE ES 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.

For further information, please contact Christopher Fretwell

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