ANNULMENT (CARTONBOARD): THE KNP CASE

Subject: Annulment (of Commission Decision)
Fines

Industry: Cartonboard
(Implications for most other industries)

Parties: Koninklijke KNP BP
Commission

Source: Judgment of the Court, dated 16 November 2000, in Case C-248/98 P (*NV Koninklijke KNP BP v Commission*)

(Note. Any case in which a party succeeds in having an unwelcome Commission Decision wholly or partly annulled, and a fine which has been imposed by the Commission substantially reduced, is likely to have lessons for other parties in a similar position; and the present case has a full discussion of the circumstances in which even the judgment of the Court of First Instance may turn out to be overturned. This case is also interesting, in that it indicates the circumstances in which the Court of Justice may take a final decision itself or will remit the case to the Court of First Instance for reconsideration. The report below gives the basic facts of the case and the principal elements of the reasons for the Court's ruling.)

Judgment

1. By application lodged at the Registry of the Court of Justice on 9 July 1998, NV Koninklijke KNP BT brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 14 May 1998 in Case T-309/94 KNP BT v Commission [1998] ECR II-1007 (hereinafter 'the contested judgment), in which the Court of First Instance annulled part of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 - Cartonboard) (OJ 1994 L 243, p. 1, hereinafter 'the Decision) and dismissed the remainder of the application.

Facts

2. In the Decision the Commission imposed fines on 19 producers supplying cartonboard in the Community on the ground that they had infringed Article 85(1) of the EC Treaty (now Article 81(1) EC).

3. According to the contested judgment, the Decision followed informal complaints lodged in 1990 by the British Printing Industries Federation, a trade organisation representing the majority of printed carton producers in the United Kingdom, and by the FédérationFrançaise du Cartonnage, and investigations which Commission officials, acting pursuant to Article 14(3) of 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) had carried out in April 1991, without prior notice, at the premises of a number of undertakings and trade associations operating in the cartonboard sector.

4. The evidence obtained from those investigations and following requests for information and documents led the Commission to conclude that from mid-1986 until at least (in most cases) April 1991 the undertakings concerned had participated in an infringement of Article 85(1) of the Treaty. The Commission therefore decided to initiate a proceeding under Article 85 of the Treaty and, by letter of 21 December 1992, served a statement of objections on each of the undertakings concerned, all of which submitted written replies. Nine undertakings requested an oral hearing.

5. At the end of that procedure the Commission adopted the Decision, which includes the following provisions:

"Article 1

"Buchmann GmbH, Cascades SA, Enso-Gutzeit Oy, Europa Carton AG, Finnboard - the Finnish Board Mills Association, Fiskeby Board AB, Gruber & Weber GmbH & Co KG, Kartonfabriek de Eendracht NV (trading as BPB de Eendracht NV), NV Koninklijke KNP BT NV (formerly Koninklijke Nederlandse Papierfabrieken NV), Laakmann Karton GmbH & Co KG, Mo Och Domsjö AB (MoDo), Mayr-Melnhof Gesellschaft mbH, Papeteries de Lancey SA, Rena Kartonfabrik A/S, Sarrió SpA, SCA Holding Ltd (formerly Reed Paper & Board (UK) Ltd), Stora Kopparbergs Bergslags AB, Enso Española SA (formerly Tampella Española SA) and Moritz J. Weig GmbH & Co KG have infringed Article 85(1) of the EC Treaty by participating, in the case of Buchmann and Rena from about March 1988 until at least the end of 1990, in the case of Enso Española, from at least March 1988 until at least the end of April 1991, in the case of Gruber & Weber from at least 1988 until late 1990, in the other cases, from mid-1986 until at least April 1991, in an agreement and concerted practice originating in mid-1986 whereby the suppliers of cartonboard in the Community

- met regularly in a series of secret and institutionalised meetings to discuss and agree a common industry plan to restrict competition,

- agreed regular price increases for each grade of the product in each national currency,

- planned and implemented simultaneous and uniform price increases throughout the Community,

- reached an understanding on maintaining the market shares of the major producers at constant levels, subject to modification from time to time,

- increasingly from early 1990, took concerted measures to control the supply of the product in the Community in order to ensure the implementation of the said concerted price rises,

- exchanged commercial information on deliveries, prices, plant standstills, order backlogs and machine utilisation rates in support of the above measures.

(...)

"Article 3

"The following fines are hereby imposed on the undertakings named herein in respect of the infringement found in Article 1:

(...)

(ix) NV Koninklijke KNP BT NV, a fine of ECU 3 000 000;

(...)"

[Paragraphs 7 to 18 give details of the Decision and of the proceedings in the Court of First Instance.]

The appeal

19. In its appeal the appellant submits that the Court should set aside the contested judgment and annul the Decision and cancel, or at least reduce, the fine imposed on it. In the alternative, it requests that the case be referred back to the Court of First Instance.

20. The appellant relies on four pleas in law in support of its appeal.

The first plea

21. By its first plea the appellant complains that the Court of First Instance did not annul the Decision on the ground that it contained an inadequate statement of reasons and itself failed to observe the obligation to state reasons laid down in Article 190 of the EC Treaty (now Article 253 EC) because it did not give reasons for its refusal to annul the Decision.

22. According to the appellant, the Decision does not contain sufficient information regarding the method of fixing the fine and the extent of the participation by the appellant's two subsidiaries (KNP Vouwkarton and Badische), either in terms of turnover or the duration and gravity of the infringement. It was not until one month before the hearing, or at the hearing, that the Commission provided clarification in that respect.

23. According to the applicant, it is settled law that the Commission must indicate, in the decision itself, how the fine was fixed. That is *a fortiori* the case where, as in the present case, the conduct of several undertakings has been attributed to the appellant.

24. The appellant adds that, contrary to the case-law of the Court of Justice, the Court of First Instance held, in paragraph 79 of the contested judgment, that Commission's obligation to state reasons could be moderated in the present case because of the existence of 'specific circumstances, even though the Commission, which had applied a mathematical formula, could have set out that formula in the Decision, as the Court of First Instance in fact pointed out in paragraph 78 of the contested judgment.

25. It is irrelevant that the extent of that obligation to state reasons was clarified by the Court of First Instance only in its judgments in *Tréfilunion v Commission, Société Métallurgique de Normandie v Commission and Société des Treillis et Panneaux Soudés v Commission*, the Welded Steel Mesh judgments, referred to in paragraph 77 of the contested judgment, since the obligation to state reasons stems from Article 190 of the Treaty and not from the case-law of the Court of First Instance.

26. The Commission contends, in the light of the case-law of the Court of Justice (see Case C-219/95 P, *Ferriere Nord v Commission*, paragraph 32, et seq, and the order in *SPO and Others v Commission*, paragraph 54), that both the Commission and the Court of First Instance, where the latter amends the amount of a fine in a specific case in the exercise of its unlimited jurisdiction under Article 172 of the EC Treaty (now Article 229 EC) and Article 17 of Regulation 17, have a margin of discretion when they determine the amount of the fine. The existence of that discretion implies that it is not absolutely necessary for the statement of reasons to set out in minute detail the method by which the amount of the fine was calculated.

27. The Commission observes that the Court of First Instance held in paragraph 74 of the contested judgment that points 169 to 172 of the Decision contained 'a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and the duration of the infringement committed by each of the undertakings in question.

28. Points 75 to 79 of the contested judgment are, according to the Commission, superfluous. The Commission contends, moreover, that the appellant's reading of those judgments is incorrect. In those judgments the Court of First Instance found, as it did in the contested judgment, that the statement of reasons for the Commission's decision was adequate, while expressing the wish that there should be greater transparency as to the method of calculation adopted. In so doing, the Court of First Instance did not treat the lack of transparency as amounting to a failure to state adequate reasons for the Decision. At most, the position adopted by the Court of First Instance reflects the principle of good administrative practice, in the sense that addressees of decisions should not be forced to bring proceedings before the Court of First Instance in order to ascertain all the details of the method of calculation used by the Commission. However, such considerations could not in themselves constitute a ground of annulment of the Decision.

29. Last, the Commission states that those implications of the Welded Steel Mesh judgments have recently been confirmed by the Court of First Instance. It has held that the information which it is desirable that the Commission should communicate to the addressee of a Decision must not be regarded as an additional statement of reasons, but solely as the translation into figures of criteria set out in the Decision in so far as they are capable of being quantified (see, in particular, the judgments in Case T-151/94, *British Steel v Commission*, paragraphs 627 and 628, and in Case T-305/94, *Limburgse Vinyl Maatschappij and Others v Commission*, paragraphs 1180 to 1184).

30. It is necessary, first, to set out the various stages in the reasoning adopted by the Court of First Instance in response to the plea alleging infringement of the duty to state reasons in regard to the calculation of the fines.

31. The Court of First Instance first of all referred, in paragraph 67 of the contested judgment, to the settled case-law to the effect that the purpose of the obligation to give reasons for an individual decision is to enable the Community judicature to review the legality of the decision and to provide the party concerned with an adequate indication as to whether the decision is well founded or whether it may be vitiated by some defect enabling its validity to be challenged, the scope of that obligation being dependent on the nature of the act in question and on the context in which it was adopted (see, in particular, besides the case-law cited by the Court of First Instance, Case C-22/94, *Irish Farmers Association and Others v Ministry for Agriculture, Food and Forestry, Ireland, and the Attorney General*, paragraph 39).

32. The Court of First Instance then explained in paragraph 68 of the contested judgment that as regards a decision which, as in this case, imposes fines on several undertakings for infringement of the Community competition rules, the scope of the obligation to state reasons must be assessed in the light of the fact that the gravity of the infringements depends on numerous factors including, in particular, the specific circumstances and context of the case and the deterrent character of the fines; moreover, no binding or exhaustive list of criteria to be applied has been drawn up (order in Case C-137/95 P, *SPO and Others v Commission*, paragraph 54).

33. In that regard, the Court of First Instance held in paragraph 74 of the contested judgment that: 'points 169 to 172 of the Decision, interpreted in the light of the detailed statement in the Decision of the allegations of fact against each of its addressees, contain a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and duration of the infringement committed by each of the undertakings in question (see, to the same effect, Case T-2/89, *Petrofina v Commission*, paragraph 264).

34. However, in paragraphs 75 to 79 of the contested judgment the Court of First Instance qualified, somewhat ambiguously, that statement in paragraph 74.

35. According to paragraphs 75 and 76 of the contested judgment, the Decision does not indicate the precise figures systematically taken into account by the

Commission in fixing the amount of the fines, albeit it could have disclosed them and this would have enabled the undertakings better to assess whether the Commission had erred when fixing the amount of each individual fine and whether that amount was justified by reference to the general criteria applied. The Court added, in paragraph 77, that according to the Welded Steel Mesh judgments it is desirable for undertakings to be able to ascertain in detail the method used for calculating the fine imposed without having to bring court proceedings against the Commission's decision in order to do so.

36. It concluded, in paragraph 79 of the contested judgment, that there had been an absence of specific grounds in the Decision regarding the method of calculation of the fines, which was justified in the specific circumstances of the case, namely the disclosure of the method of calculating the fines during the proceedings before the Court of First Instance and the novelty of the interpretation of Article 190 of the Treaty given in the Welded Steel Mesh judgments.

37. Before examining, in the light of the arguments submitted by the appellant, the correctness of the findings by the Court of First Instance regarding the consequences which disclosure of calculations during the proceedings before it and the novelty of the Welded Steel Mesh judgments may have in regard to fulfilment of the obligation to state reasons, it is necessary to determine whether fulfilment of the duty to state reasons laid down in Article 190 of the Treaty required the Commission to set out in the Decision, not only the factors which enabled it to determine the gravity and duration of the infringement, but also a more detailed explanation of the method of calculating the fines.

38. The Court of First Instance has jurisdiction in two respects over actions contesting Commission decisions imposing fines on undertakings for infringement of the competition rules.

39. First, under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) it has the task of reviewing the legality of those decisions. In that context, it must in particular review compliance with the duty to state reasons laid down in Article 190 of the Treaty, infringement of which renders a decision liable to annulment.

40. Second, the Court of First Instance has power to assess, in the context of the unlimited jurisdiction accorded to it by Article 172 of the Treaty (now Article 229 EC) and Article 17 of Regulation No 17, the appropriateness of the amounts of fines. That assessment may justify the production and taking into account of additional information which is not as such required, by virtue of the duty to state reasons under Article 190 of the Treaty, to be set out in the decision.

41. As regards review of compliance with the duty to state reasons, the second subparagraph of Article 15(2) of Regulation No 17 provides that "[i]n fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement".

42. In those circumstances, in the light of the case-law referred to in paragraphs 67 and 68 of the contested judgment, the essential procedural requirement to state reasons is satisfied where the Commission indicates in its decision the factors which enabled it to determine the gravity of the infringement and its duration. If those factors are not stated, the decision is vitiated by failure to state adequate reasons.

43. The Court of First Instance correctly held in paragraph 74 of the contested judgment that the Commission had satisfied that requirement. It must be observed, as the Court of First Instance observed, that points 167 to 172 of the Decision set out the criteria used by the Commission in order to calculate the fines. First, point 167 concerns in particular the duration of the infringement. It also sets out, as does point 168, the considerations on which the Commission relied in assessing the gravity of the infringement and the general level of the fines. Point 169 contains the factors taken into account by the Commission in determining the amount to be imposed on each undertaking. Point 170 identifies the undertakings which were to be regarded as ringleaders of the cartel, and which should accordingly bear special responsibility in comparison with the other undertakings. Lastly, points 171 and 172 of the Decision set out the effect on the amount of the fines of the cooperation by various manufacturers with the Commission during its investigations in order to establish the facts or when they replied to the statement of objections.

44. The fact that more specific information, such as the turnover achieved by the undertakings or the rates of reduction applied by the Commission, were communicated subsequently, at a press conference or during the proceedings before the Court of First Instance, is not such as to call in question the finding in paragraph 74 of the contested judgment. Where the author of a contested decision provides explanations to supplement a statement of reasons which is already adequate in itself, that does not go to the question whether the duty to state reasons has been complied with, though it may serve a useful purpose in relation to review by the Community court of the adequacy of the grounds of the decision, since it enables the institution to explain the reasons underlying its decision.

45. Admittedly, the Commission cannot, by a mechanical recourse to arithmetical formulae alone, divest itself of its own power of assessment. However, it may in its decision give reasons going beyond the requirements set out in paragraph 42 of this judgment, in particular by indicating the figures which, especially in regard to the desired deterrent effect, influenced the exercise of its discretion when setting the fines imposed on a number of undertakings which participated, in different degrees, in the infringement.

46. It may indeed be desirable for the Commission to make use of that possibility in order to enable undertakings to acquire a detailed knowledge of the method of calculating the fine imposed on them. More generally, such a course of action may serve to render the administrative act more transparent and facilitate the exercise by the Court of First Instance of its unlimited jurisdiction, which enables it to review not only the legality of the contested decision but also the appropriateness of the fine imposed. However, as the Commission has submitted,

the availability of that possibility is not such as to alter the scope of the requirements resulting from the duty to state reasons.

47. Consequently, the Court of First Instance could not, consistently with Article 190 of the Treaty, find, as it did in paragraph 78 of the contested judgment, that 'the Commission must, if it systematically took into account certain basic factors in order to fix the amount of fines, set out those factors in the body of the decision. Nor, without contradicting itself in the grounds of its judgment, could it, after finding in paragraph 74 of the contested judgment that the Decision contained a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and duration of the infringement committed by each of the undertakings in question, then refer, as it did in paragraph 79 of the contested judgment, to the absence of specific grounds in the Decision regarding the method of calculation of the fines.

48. However, the error of law so committed by the Court of First Instance is not such as to cause the contested judgment to be set aside, since, having regard to the considerations, set out above, the Court of First Instance validly rejected, notwithstanding paragraphs 75 to 79 of the contested judgment, the plea of infringement of the duty to state reasons in regard to calculation of the fines.

49. As there was no obligation on the Commission, as part of its duty to state reasons, to indicate in the Decision the figures relating to the method of calculating the fines, there is no need to examine the various objections raised by the applicant which are based on that erroneous premiss.

50. The first plea must therefore be rejected.

The second plea

51. By its second plea the appellant complains, first, that the Court of First Instance did not deal with its argument that the Commission had abused its powers in ordering it to pay a fine in respect of the period after the end of 1989 or, in the alternative, should have imposed on it only a very low fine, having regard to the marginal nature of its participation in the cartel. In failing to take account of those special circumstances, the Court of First Instance infringed Article 190 of the Treaty.

52. Second, the appellant complains that the Court of First Instance applied the rate of 7.5% to its turnover for the period in question, which is inappropriate in view of the purely marginal nature of its participation in the cartel.

53. As regards the first part of this plea, it must be held that, as the Commission has stated, it is clear from paragraphs 55 to 59 of the contested judgment that the Court of First Instance replied to the appellant's argument in order to refute it. The complaint that there was an inadequate statement of reasons must therefore be rejected.

54. As to the second part of this plea, it should be observed that the Court of First Instance has unlimited jurisdiction when it rules on the amount of fines imposed on undertakings for infringements of Community law and that it is not for the Court of Justice, when ruling on questions of law in the context of an appeal, to substitute, on grounds of fairness, its own assessment for that of the Court of First Instance in the matter (*Ferriere Nord v Commission*, cited above, paragraph 31).

55. In the present case, the appellant merely contests the assessment by the Court of First Instance of the appropriate amount of the fine but does not state why, as a matter of law, it should be declared unlawful by the Court of Justice. The second part of the plea must therefore be rejected as inadmissible.

56. The second plea must therefore be rejected.

The third plea

57. By its third plea the appellant submits that the Court of First Instance wrongly held in paragraph 112 of the contested judgment that, as regards intra-group sales of cartonboard, 'the appellant has not adduced any evidence to show that the Commission should not have taken them into account when it calculated the fine.

58. It states that, so far as concerns Badische, it became apparent only at the hearing that the Commission had included internal sales of the product concerned (to a sister company which converted it into cartons) in the turnover used as a basis for calculating the fine. The appellant then pleaded that such transactions had had no influence on the Community market and could not be taken into account in order to determine the fine.

59. In those circumstances, by asserting that the appellant had not supplied 'any evidence in that regard, the Court of First Instance infringed its rights of defence, the duty to state reasons, the principles of equal treatment and proportionality, and Article 15 of Regulation No 17.

60. According to the Commission, contrary to the appellant's claims, the appellant had long known that its group turnover had been taken into account in order to determine its market shares. Although it is true that this point was raised by the appellant during the hearing, it did not explain why sales to a sister company should have been deducted. Consequently, the conclusion reached by the Court of First Instance at paragraph 112 of the contested judgment is correct.

61. The plea here under consideration is inoperative. Even if the appellant had in fact adduced the necessary evidence at the hearing before the Court of First Instance to support its argument that the Commission had wrongly taken into account intra-group sales of cartonboard in order to fix the fine, that argument could not be upheld in the light of Article 15(2) of Regulation No 17 which aims to ensure that the penalty is proportionate to the undertaking's size on the product market in respect of which the infringement was committed (see, to that effect, Joined Cases 100/80 to 103/80, *Musique Diffusion Française and Others v Commission*, paragraph 119).

62. As the Court of First Instance itself rightly held in its judgment in Case T-304/94, *Europa Carton v Commission*, paragraph 128: "To ignore the value of the applicant's internal cartonboard deliveries would inevitably give an unjustified advantage to vertically integrated companies. In such a case the benefit derived from the cartel might not be taken into account and the undertaking in question would avoid the imposition of a fine proportionate to its importance on the product market to which the infringement relates."

63. The third plea must therefore be rejected.

The fourth plea

64. By its fourth plea the appellant submits that the Commission, when fixing the fine, wrongly attributed to it responsibility for the infringement committed by Badische with effect from mid-1986, it having acquired that company only on 1 January 1987, and complains that the Court of First Instance endorsed that attribution of responsibility without explanation, even though the appellant had contested it. When assessing the fine the Court of First Instance thus infringed the duty to state reasons, the principles of equal treatment and of proportionality and Article 15 of Regulation No 17.

65. The Commission contends that this plea is inadmissible because neither in the written procedure nor in the hearing before the Court of First Instance did the appellant contest the attribution to it of the infringement by Badische.

66. Although in fact according to paragraph 17 of the contested judgment, with effect from 31 December 1986, "KNP ... acquired the German packaging producer Herzberger Papierfabrik Ludwig Osthushenrich GmbH und Co. KG, whose production unit, Badische Cartonfabrik ... participated in meetings of the PC, the JMC and the Economic Committee", the Court of First Instance nevertheless held in paragraph 55 that the Commission was "entitled to attribute Badische's unlawful conduct to the applicant" and, in paragraph 104, "rightly took the view that the applicant had participated in the cartel from mid-1986 until April 1991". However, nowhere in the contested judgment has the Court of First Instance given reasons for the attribution of responsibility to KNP for Badische's participation in the cartel over the period prior to its acquisition.

67. As the Advocate General has observed in points 48 and 50 of his Opinion, and contrary to the Commission's contentions, the appellant, in its written pleadings, expressly requested the Court of First Instance to draw the appropriate conclusion from the fact that Badische had become part of its group with effect only from 1 January 1987.

68. Consequently, by failing to deal with the appellant's argument that it should in any event be liable for Badische's infringements only with effect from its acquisition, the Court of First Instance infringed the duty to state reasons.

69. For that reason, paragraph 1 of the operative part of the contested judgment must be annulled.

70. Under the first paragraph of Article 54 of the EC Statute of the Court of Justice, the Court of Justice is to set aside the decision of the Court of First Instance if the appeal is well founded. It may either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment. Since the state of the proceedings so permits, final judgment must be given on the amount of the fine to be imposed on the appellant.

The action for annulment

71. As regards the duration of the period of the infringement to be attributed to the appellant and, in particular, the attribution to it of Badische's infringement over the period prior to its acquisition by the appellant, it should be noted that it falls, in principle, to the legal or natural person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, at the time of the decision finding the infringement, another person had assumed responsibility for operating the undertaking.

72. In the present case it is undisputed that Badische participated in the cartel from mid-1986 until 1 January 1987 when it was the production unit of the German packaging producer Herzberger Papierfabrik Ludwig Osthushenrich GmbH und Co. KG. The latter entity was acquired, without loss of legal personality, by the appellant only on 31 December 1986, which, according to the second paragraph of point 149 of the Decision, became its 95% owner throughout the period of the infringement in question.

73. For the reasons given in paragraphs 46 to 50 of the contested judgment, the appellant must be held responsible for the infringement committed by Badische over the period from January 1987 to April 1991. As the Court of First Instance observed:

"46. First, the applicant does not contend that it was unable to exert a decisive influence on the commercial policy of KNP Vouwkarton and Badische.

"47. Moreover, it is not disputed that a member of the applicant's management board participated in, and even presided over, the meetings of the PWG until 1988. According to the Decision, the main discussions with an anti-competitive object took place in the PWG and that finding is not disputed by the applicant.

"48. In those circumstances, the Commission has proved that, through the involvement of the member of its management board, the applicant was actively implicated in the anti-competitive conduct of KNP Vouwkarton. In involving itself in that way in the participation of one of its subsidiaries in the cartel, the applicant was aware, and must also have approved of, Badische's participation in the infringement in which KNP Vouwkarton took part.

"49. The applicant's responsibility is not affected by the fact that the attendance of the member of its management board at meetings of the bodies of the PG Paperboard ceased in 1988. It was for the applicant, as parent company, to adopt in regard to its subsidiaries any measure necessary to prevent the continuation of an infringement of which it was aware. Furthermore, the applicant has not disputed that it did not even attempt to prevent the continuation of the infringement.

"50. It also follows that the sale of KNP Vouwkarton to Mayr-Melnhof with effect from 1 January 1990 did not affect the applicant's responsibility for Badische's continuing anti-competitive conduct."

74. Having regard to the reasons given in the contested judgment, as supplemented by the foregoing considerations, the fine imposed on the appellant will be fixed at €2,600,000.

Costs

75. Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

76. As the appellant has been unsuccessful in the majority of its pleas in the appeal, it will be ordered to bear its own costs and to pay two-thirds of the Commission's costs relating to the proceedings before the Court of Justice.

Court's Ruling

The Court hereby:

1. Sets aside paragraph 1 of the operative part of the judgment of the Court of First Instance of 14 May1998 in Case T-309/94 KNP BT v Commission;

2. Sets the amount of the fine imposed on NV Koninklijke KNP BT by Article 3 of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 - Cartonboard) at €2,600,000;

3. Dismisses the remainder of the appeal;

4. Orders NV Koninklijke KNP BT to bear its own costs and to pay two-thirds of the costs of the Commission of the European Communities relating to the proceedings before the Court of Justice;

5. Orders the Commission of the European Communities to bear one-third of its own costs relating to the proceedings before the Court of Justice. ■