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## Case T-448/05 Oxley Thread v Commission, judgment of the General Court

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In its judgment of 28 April 2010, the General Court has rejected Oxley Thread Ltd's appeal against a penalty imposed by the European Commission in cartel proceedings. Oxley's appeal was one of several against the same decision.

The Commission's decision of 14 September 2005 found that Oxley and other companies had participated in a price fixing cartel in the automotive thread market between 1998 and 2000, contrary to Article 81 of the EC Treaty (now Article 101 TFEU). The Commission imposed a penalty on Oxley of €1.3m. In the same decision the Commission found that two other cartels had taken place in the industrial thread sector. One of those cartels related to UK industrial thread, in which Oxley had also participated. However the Commission was time-barred from imposing fines for that cartel.

Oxley appealed against the penalty on various grounds. First, Oxley alleged that the Commission had erred when setting a starting amount for Oxley's penalty. In particular, the Commission was wrong to group the parties to the cartel by reference only to their turnover on the relevant market, since the result was to put Oxley in same fining category as other undertakings whose *total* turnover far exceeded Oxley's. Oxley alleged that in so doing the Commission had breached the principles of proportionality and equal treatment as well as the Commission's own *Guidelines on the method of setting fines*<sup>1</sup>, which referred to the "size" of an undertaking as well as to the deterrent effect of the fine. Oxley argued that the Commission had failed to take account of the very different size of the undertakings and the different impact of the fine.

The Court held that the Commission had not departed from its own Guidelines, which allowed the Commission to take into account *either* total or relevant market turnover, as circumstances require. Here the Commission had been correct to consider that the impact of the undertakings' conduct on the market depended on their importance on that market, which could be determined by reference to their turnover on that market. The Commission was under no obligation to calculate the fine by reference to overall turnover, nor to ensure that the final penalty reflected every difference in overall turnover between the undertakings. Interestingly, this lends endorsement to the Commission's approach in its most recent fining guidance, which is to base fines on turnover in the relevant market at the time of the infringement<sup>2</sup>.

<sup>1</sup> In the version in force at the time – see OJ 1998 C 9, p. 3. See now the Commission's 2006 *Guidelines on the method of setting fines* (OJ 2006 C 210, p. 2)

<sup>2</sup> See the Commission's *Guidelines on the method of setting fines* (OJ 2006 C 210, p. 2) at paragraphs 13-18

Secondly, Oxley alleged that the Commission was wrong to classify the automotive thread cartel as “very serious” when setting the penalty, since the infringement was of a lesser gravity than the other thread cartels and (for example) had been implemented to a lesser extent. The Court held that the *nature of the infringement* was of the *utmost importance* in determining its seriousness, and that agreements and concerted practices which fix prices (as here) can be characterised as very serious based on their nature alone, regardless of their impact. Furthermore the Court referred to previous case law establishing that the existence of more serious infringements did not mean that the infringement in this case was not “very serious”<sup>3</sup>. Any differences could be reflected in different penalties even within the “very serious” category.

Thirdly, Oxley alleged that the discount of 15% in its penalty, allowed by the Commission to reflect Oxley’s cooperation, was insufficient. In particular, the Commission had failed to award an additional discount for evidence provided by Oxley after receiving the Statement of Objections, and had failed to take into account cooperation provided by Oxley (outside the scope of the Commission’s Leniency Notice<sup>4</sup>) in relation to the separate industrial thread cartel. The Court noted that the Commission grants leniency discounts “*as a reward for making it easier to establish the infringement*”, and the question whether Oxley should be entitled to an additional reduction “*depends on the quality of the [additional cooperation provided by Oxley] and its usefulness*”, to be assessed by the Commission in the exercise of its broad discretion in this context. In this case the Commission had not made use of the additional evidence provided by Oxley, with the consequence that it had not erred in refusing to allow an additional discount. Furthermore Oxley could not claim an additional reduction in respect of its cooperation relating to the separate industrial thread cartel, since that cooperation was provided in the course of a separate administrative procedure and had been of no use to the Commission in establishing the existence of the automotive thread cartel.

### **Other relevant decisions**

On the same day, the General Court issued judgments in appeals brought by other parties to the industrial threads cartels found by the Commission. Of the other appeals, only Belgian Sewing Thread (“BST”) succeeded in having its penalty reduced. In Case T-452/05 *Belgian Sewing Thread*, the General Court accepted BST’s submission that the Commission had exceeded the bounds of its discretion and committed a manifest error of assessment in allowing a reduction of only 20% of the penalty imposed on BST. BST had provided significant cooperation, whereas other undertakings which had been given a reduction of 15% had simply failed to contest the facts. As a consequence the differential of 5% in the leniency given was unreasonably low. The General Court therefore substituted a reduction of 30% to BST’s penalty.

**George Peretz represented Oxley Thread.**

For more information on **George Peretz** and **Jorren Knibbe**, please contact the Clerks on 020 7405 7211 or consult the ‘Find a Barrister’ section at [www.monckton.com](http://www.monckton.com).

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<sup>3</sup> *Notice on the non-imposition or reduction of fines in cartel cases* (OJ 1996 C 207, p. 4). See now the Commission’s *Notice on immunity from fines and reduction of fines in cartel cases* (OJ 2006 C 298, p. 11)

<sup>4</sup> *Notice on the non-imposition or reduction of fines in cartel cases* (OJ 1996 C 207, p. 4). See now the Commission’s *Notice on immunity from fines and reduction of fines in cartel cases* (OJ 2006 C 298, p. 11)