

Paris Court of Appeal overturns the automatic increase of the fine of subsidiaries forming part of a group

🔗 Judgment of the Paris Court of Appeal, January 21, 2016

On January 21, 2016, the Paris Court of Appeal, ruling on referral, reduced the fines that had been issued by the FCA to subsidiaries of two major groups, Inéo Réseaux Sud-Ouest and Spie Sud-Ouest, for their participation in a concerted practice on private and public tender markets. The Court of Appeal ruled that where an infringing company belongs to a group, this circumstance does not justify an automatic increase in the fine to be paid by the infringing company when it has acted on an autonomous basis from its parent company. In its decision, the FCA took into account the fact that the subsidiaries belonged to “*a major corporate group (...) whose turnover was particularly significant*” to increase the fine imposed upon the subsidiaries, whose complete autonomy from their parent companies had been recognized. Both subsidiaries appealed the FCA’s decision.

According to European precedents, parent companies are liable for the illegal behaviour of their subsidiaries where they exercise decisive influence over them. Such influence is presumed where the subsidiaries in question are wholly owned or controlled by their parent companies. In a decision dated January 6, 2011, the FCA applied this European presumption for the first time. However, in the present case, as the FCA issued the statement of objections before January 6, 2011, it did not apply the presumption and conducted an *in concreto* analysis of the evidence relating to the economic, legal and organizational links between both subsidiaries and their respective parent companies. The FCA concluded that both infringing subsidiaries had

complete commercial autonomy from their respective parents.

To calculate the amount of the fine, the European Commission takes into account the fact that the subsidiary forms a single economic entity with the corporate group to which it belongs. It relies on the size of the corporate group involved to apply a multiplying factor to the basic amount of the fine to be imposed upon the subsidiary where its parent is presumed to exercise a decisive influence.

Until now, to justify an increase in the fine, the FCA systematically took into account the size of the corporate group to which the infringing subsidiary belonged, regardless of its commercial autonomy *vis-à-vis* its parent company. On several occasions, the Court of Appeal confirmed the FCA’s position in order for the fine to be as deterrent and proportional as possible pursuant to Article L. 464-2 I, 3 of the French Commercial Code.

However, in its judgment of January 21, 2016, the Paris Court of Appeal overturned this precedent by considering that “*the fact that a company belongs to a corporate group cannot justify, in itself, the automatic increase of the amount of the fine*”.

It therefore stems from this judgment that the FCA may no longer automatically increase the fine of an infringing subsidiary that is acting completely autonomously from its parent company.