

## Tomkins PLC Win in the European Court of Justice

January 16, 2013

### ATTORNEYS

Bitton, Daniel

Briggs, John

### PRACTICE AREAS

Antitrust

On January 16, 2013, the European Court of Justice (ECJ) released information confirming its rejection of the appeal of the European Commission (EC) to the judgment of the General Court, which reduced a fine imposed on Tomkins PLC based on the infringement of Article 101 (price-fixing) by its former subsidiary Pegler. The underlying issue in the case was the liability of the parent company, Tomkins, for the alleged violations of its former subsidiary, Pegler. Both Pegler and Tomkins appealed the judgment of the EC. The General Court reduced the fine on Pegler based on evidence available only to Pegler about the duration of the conduct, and reduced the fine as well on Tomkins for the same reasons.

The ECJ ruled for the first time that a parent company, in its capacity simply as a passive shareholder, cannot be held liable independently of the subsidiary and cannot be held liable to a greater extent than its subsidiary. Tomkins successfully preserved a reduced fine and the court awarded Tomkins costs, including attorneys' fees. The decision that a shareholder company cannot be punished more than the subsidiary has potentially broad implications for competition cases before the European Court.

Axinn has served as chief counsel to Tomkins by lead partner John DEQ. Briggs. The firm was unable to appear for Tomkins before the ECJ, but advised Tomkins throughout the appellate process.