

Form of order sought

The applicant claims that the Court should:

- annul the Commission's Decision of 27 May 2016 (Case AT.40231 — VIMC/WK&FGB); and
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision C (2016) 3351 final of 27 May 2016, by which the applicant's complaint was rejected on the basis of Article 13 of Regulation (EC) No 1/2003.⁽¹⁾

In support of the action, the applicant relies on a single plea in law, alleging an improper exercise of discretion.

In this connection, the applicant submits that the application or non-application of Article 13 of Regulation (EC) No 1/2003 is not within the Commission's power of discretion. On the contrary, it argues, the Commission must take into account the particular circumstances of each case and cannot, on the basis of that provision and without further clarification, reject a matter already under examination by a national authority.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 3 August 2016 — Pometon v Commission

(Case T-433/16)

(2016/C 371/20)

Language of the case: Italian

Parties

Applicant: Pometon SpA (Martellago, Italy) (represented by: E. Fabrizio, V. Veneziano and A. Molinaro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- primarily, annul the contested decision;
- in the alternative, cancel or reduce the fine imposed on Pometon;
- order the defendant to repay any sums paid by the applicant in complying with the contested decision during the proceedings and to reimburse any other costs borne by the applicant in complying with that decision;
- in any event, order the defendant to pay the applicant's legal fees and any other costs and charges connected with the present proceedings.

Pleas in law and main arguments

The present action has been brought against Commission Decision C(2016) 3121 final of 25 May 2016 (Case AT.39792 — Steel Abrasives) relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the EEA Agreement ('the contested decision').

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging infringement of the principle of a fair trial, the principle of the presumption of innocence and the rights of the defence, as the Commission ascribed specific conduct to Pometon in the context of Decision C(2014) 2074 final of 2 April 2014 ('the settlement decision'), adopted in respect of Ervin Industries Inc. and Ervin Amasteel, Winoa SA and WHA Holding SAS, Metalltechnik Schmidt GmbH & Co. KG and Eisenwerk Wurth GmbH ('the other parties'), and thus took the contested decision without having had the opportunity impartially to assess, free from any constraints, Pometon's position or the arguments put forward by that company in its defence.
 - In the settlement decision — and thus before Pometon had been given the opportunity to defend itself — the Commission expressly ascribed to the applicant the same conduct imputed to the other parties, to which a specific infringement of Article 101 TFEU and Article 53 of the EEA Agreement was then attributed, in that same settlement decision, precisely because of that conduct. This inevitably and irremediably undermined the Commission's ability to make a truly impartial decision regarding the applicant.
2. Second plea in law, alleging infringement and misapplication of Article 101 TFEU and Article 53 of the EEA Agreement, an inadequate and contradictory statement of reasons, and infringement of the rights of the defence and the burden of proof, as the Commission ascribed to the applicant, without evidence, participation in an alleged cartel in which it did not, in fact, participate.
 - In support of its arguments, the Commission adduced evidence that was imprecise, contradictory, unclear and not sufficient to establish Pometon's participation in the alleged cartel.
3. Third plea in law, alleging infringement and misapplication of Article 101 TFEU and Article 53 of the EEA Agreement, errors of assessment, failure to conduct a proper investigation, and manifest illogicality, as the Commission found that the conduct attributed to Pometon had as its object a restriction of competition.
4. Fourth plea in law, alleging infringement and misapplication of Article 101 TFEU and Article 53 of the EEA Agreement, failure to state reasons and to conduct a proper investigation, failure to have due regard for the burden of proof as regards the duration of the applicant's presumed participation in the alleged cartel and, as a result, infringement of Articles 23(2), 25(1) and 25(5) of Regulation No 1/2003,⁽¹⁾ and infringement of the principle of legal certainty, as the Commission imposed a financial penalty on the applicant even though it was time-barred.
 - According to the applicant, the date on which its alleged participation in the presumed infringement ascribed to it in the contested decision came to an end cannot be the date identified by the Commission but, at the outside, a much earlier date, so that the Commission's power to impose fines must be regarded as time-barred.
5. Fifth plea in law, alleging a total failure to state reasons and infringement of the principles of proportionality and equal treatment in fixing the amount of the fine when adjustments are made to the basic amount pursuant to Paragraph 37 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.
 - The Commission used Paragraph 37 of the Guidelines on the method of setting fines in a way that was clearly discriminatory, applying, in Pometon's case, a rate of abatement of the fine that was distinctly lower than the rate applied to the other parties.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) (OJ 2003 L 1, p. 1).