

Forms of order sought

The applicants claim that the Court should:

- annul the Commission's inspection decision of 30 March 2011 notified on 31 March 2011;
- annul all measures taken on the basis of the inspections, which took place on the basis of that unlawful decision;
- in particular order the Commission to return all the copies of documents made during the inspections, on pain of the annulment of the future Commission decision by the General Court, and
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2011) 2365 of 30 March 2011 (Cases COMP/39.678 and COMP/39.731), ordering, in accordance with Article 20(4) of Council Regulation (EC) No 1/2003 ⁽¹⁾, inspections of Deutsche Bahn AG and all legal persons directly or indirectly controlled by the latter by reason of a potentially anti-competitive model of a strategic use of the infrastructure administered by companies of the DB group and of the provision of rail-linked services.

In support of their action, the applicants make five pleas in law.

1. First plea: infringement of the fundamental right to inviolability of one's premises by reason of lack of prior judicial authorisation.
2. Second plea: infringement of the fundamental right to an effective legal remedy by reason of the lack of possibility of prior judicial review of the inspection decision, both from the factual and the legal point of view.
3. Third plea: Unlawfulness of the inspection decision, as it is based on information obtained by the Commission in the course of implementing the inspection decision on the system of rebates for electric traction energy, in the context of a very broad inquiry ('fishing expedition'), and thus in breach of the applicants' defence rights.
4. Fourth plea: infringement of defence rights by reason of a disproportionately wide and non-specific subject-matter of the inspection.
5. Fifth plea: infringement of the proportionality principle, as the Commission does not have jurisdiction over the subject-matter of the inspection and could in any event have obtained the relevant information through the competent Bundesnetzagentur [federal network agency] or by means of a simple request for information from the applicants.

⁽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 9 June 2011 — Cemex and Others v Commission

(Case T-292/11)

(2011/C 238/42)

Language of the case: Spanish

Parties

Applicants: Cemex S.A.B. de C.V. (Monterrey, Mexico), New Sunward Holding BV (Amsterdam, The Netherlands), Cemex España, SA (Madrid, Spain), CEMEX Deutschland AG (Düsseldorf, Germany), Cemex UK (Egham, United Kingdom), CEMEX Czech Operations s.r.o. (Prague, Czech Republic), Cemex France Gestion (Rungis, France), CEMEX Austria AG (Langenzerndorf, Austria) (represented by: J. Folguera Crespo, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Article 1 of the Commission's decision of 30 March 2011; in the alternative, partially annul that article so as to exonerate the applicants from the requirement to provide information in response to the questions in Annex I to the decision with respect to all aspects which go beyond the limits of the rules and principles applicable to the Commission under European Union law;
- order the Commission to pay the costs.

Pleas in law and main arguments

The action has been brought against the Commission's decision of 30 March 2011 in proceedings pursuant to Article 18(3) of Council Regulation (EC) No 1/2003, adopted in relation to Case COMP/39.520 — Cement and related products.

In support of their action, the applicants rely on six pleas in law.

1. First plea in law, alleging an infringement of Article 18 of Regulation (EC) No 1/2003.
 - The applicants submit in this regard that the Commission went beyond the limits of its powers laid down in that provision and the case-law of the Court of Justice, even going as far as requesting information which it knew that the applicants did not hold. Moreover, that request required the applicants not only to produce, but also to process, millions of items of data of an economic nature, thereby transferring to them the investigatory role incumbent upon the Commission.
2. Second plea in law, alleging an infringement of Article 18 of Regulation (EC) No 1/2003.
 - According to the applicants, the Commission required information to be provided which was not necessary for the investigation of the alleged restrictive practices identified in the contested decision. That information bears no relation to the purpose of the investigation, is public information, or is information which has already been provided in response to earlier requirements, or amounts to data processing.

3. Third plea in law, alleging an infringement of the principle of proportionality.

— The applicants claim in this respect that the Commission requested the applicants to provide information whose collection or processing was not only unnecessary in many instances but also led to their incurring an excessive and disproportionate burden. Moreover, an extremely short time limit was imposed within which to reply and their applications to have that time limit extended were rejected.

4. Fourth plea in law, based on an infringement of Article 296 TFEU in that the Commission has not given sufficient reasons regarding the necessity and proportionality of the requested information.

5. Fifth plea in law, based on an infringement of the principle of legal certainty, in so far as the wording of the contested decision is uncertain and imprecise.

6. Sixth plea in law, based on a failure to have regard to Article 3 of Regulation (EEC) No 1/1958 which lays down the language regime of the European Economic Community.

— The applicants submit in this regard that the Commission refused to transmit the contested decision to the subsidiaries to which it applies in the language of the Member States which have jurisdiction over them, thereby knowingly making the task of data collection more difficult.

Action brought on 9 June 2011 — Holcim (Deutschland) and Holcim v Commission

(Case T-293/11)

(2011/C 238/43)

Language of the case: German

Parties

Applicants: Holcim AG (Hamburg, Germany) and Holcim Ltd (Zurich, Switzerland) (represented by: P Niggemann and K Gaßner, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the defendant's decision of 30 March 2011, adopted in proceedings under Article 18(3) of Council Regulation (EC) No 1/2003 in Case COMP/39520 — Cement and related products;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of their action, the applicants rely on eight pleas in law.

1. First plea in law: there was no valid notification of the information decision

Before issuing the information decision the defendant was provided with powers of attorney in respect of Holcim AG

(the first applicant) and statements from all the Holcim group companies concerned agreeing to use English as the language of the case. However, the information decision was addressed to Holcim Ltd (the second applicant) and 'served on' Holcim AG (the first applicant), even though there was no power of representation to that effect. The working language of Holcim Ltd and of the vast majority of the other companies concerned of the Holcim group is English, with the result that it was not possible to take sufficient note of the decision.

2. Second plea in law: the time limit within which to reply was too short and the Commission refused to extend that time limit

The information decision concerns a vast amount of detailed information on 15 group companies (such as transaction data, imports and exports, production data, market shares etc) over a period of 10 years. On the basis of the draft decision, thus at an early stage, the applicants gave the Commission detailed reasons why the 12-week time limit to provide the requested information was clearly too short. Given that the proceedings had already been underway for two and a half years and the applicants had already cooperated extensively with the Commission it was appropriate to extend the time limit. Moreover, the Commission itself delayed the data collection and made it more difficult by drafting the information decision in German, in spite of the applicants' consent to continue using English as the language of the case, thereby making it impossible for two thirds of the Holcim group companies to work with it.

3. Third plea in law: the Commission required Holcim to provide data and information which the latter did not have at its disposal

To a large extent, the information decision requires data and information from the applicants which they do not have at their disposal in the required form. Moreover, data is required which the applicants could only have produced at an exorbitant cost in terms of staff and time as a result of a change in their IT system. Such efforts do not fall within the requirement to produce information in accordance with the decision.

4. Fourth plea in law: infringement of the duty to give reasons

In the information decision, sufficient grounds are neither given for the investigation nor the choice of means of investigation, that it to say one which prescribes a penalty.

5. Fifth plea in law: infringement of the requirement that the means be necessary

Thus far the applicants have complied extensively and in full with every request for information, with the result that there was no justification for adopting an information decision prescribing a penalty instead of the less drastic option of informal requests for information.

6. Sixth plea in law: infringement of the principle of precision

In several respects, the information decision is not sufficiently clear in relation to the requested data and information, the burden of which is borne exclusively by the applicants.