The applicant claims that the Court should:

— annul Article 1 of the contested decision in so far as it considers — in the case of Roquette — that the infringement lasted from February 1987 to June 1995;

— annul Article 3 of the contested decision in so far as it imposes a fine of 10,8 million euros on Roquette Frères;

— in the exercise of its unlimited jurisdiction, reduce the amount of the fine imposed on Roquette Frères;

— order the Commission to pay the costs.

Pleas in law and main arguments

By a decision adopted on 2 October 2001, the European Union imposed on the applicant company a fine of 10,8 million euros for having participated, together with other producers of sodium gluconate, in an agreement and/or concerted practice covering the entire European Economic Area whereby they shared out sales quotas between them, fixed the price of the product concerned and colluded as to the attribution of contracts concluded with customers.

By the present action, the applicant is contesting solely the level of the fine imposed. In support of its claims, it pleads:

— infringement of Article 15 of Regulation No 17 and violation of the principles of equality and proportionality, inasmuch as the Commission failed adequately to assess either the seriousness or the duration of the breach. More particularly, according to the applicant, the defendant included, in the turnover figure used to calculate the basic amount of the fine, the sales volumes relating to another product (stock-solutions) which never formed the subject-matter of the breach. In addition, the Commission fixed the date of the breach as June 1995, whereas the leader of the cartel in the Commission's eyes itself confirmed that Roquette had decided to cease providing statistics from 1994 onwards and various items of evidence arising from the Commission's investigations and from the cooperation provided by the various undertakings showed that Roquette had left the cartel in 1994;

— misapplication by the Commission of its guidelines for calculating fines, as regards mitigating factors, and of its communication concerning the non-imposition of fines or the reduction of the amount thereof in cartel cases. The applicant asserts in that connection that the defendant:

  — assessed the supposed effects of the cartel without taking account of the information and evidence provided by the applicant, which show the limited effect which the cartel had on the market for the product in question;

  — assessed the role played by Roquette in the cartel without taking account of part played by he applicant in restraining its implementation;

  — minimised the nevertheless decisive nature of the information supplied by Roquette to prove the existence of the cartel and to explain the way in which it worked;

— violation of the principle ne bis in idem, inasmuch as the Commission failed to take account of the fact that Roquette had already been fined $ 2 500 000 by the US authorities on account of a breach concerning the same subject-matter as that giving rise to the contested decision.

Action brought on 11 December 2001 by Axions S.A. and Christian Belce against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-324/01)

(2002/C 68/26)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 11 December 2001 by Axions S.A., of Geneva (Switzerland), and Christian Belce, of Veyrier (Switzerland), represented by C. Eckhartt, lawyer.

The applicant claims that the Court should:

— annul the decision adopted on 26 September 2001 by the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case No R 599/2001-3;

— order the defendant Office to pay the costs.

Pleas in law and main arguments

The trade mark concerned:	a three-dimensional mark representing a cigar, brown in colour
Goods or services:	goods in Class 30 (chocolate, chocolate goods, bakery wares and confectionery)

Decision contested before the Board of Appeal:	refusal of registration by the examiner
Decision of the Board of Appeal:	rejection of the appeal
Grounds of claim:	— no obstacles to registration under Article 7(1)(e) of Regulation (EC) No 40/94 [1]; — sufficient distinctiveness under Article 7(1)(b) of Regulation (EC) No 40/94.

[1] Council Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 20 December 2001 by DaimlerChrysler AG against the Commission of the European Communities

(Case T-352/01)

(2002/C 68/27)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 December 2001 by DaimlerChrysler AG, Stuttgart (Germany), represented by R. Bechtold and W. Bosch, lawyers.

The applicant claims that the Court should:

— annul the Commission's decision of 10 October 2001 (COMP/36.246 — Mercedes-Benz);

— in the alternative, reduce the fine imposed in Article 3 of that decision;

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

By the contested decision, the Commission imposed a fine of EUR 71 825 million on the applicant for three infringements of Article 81(1) of the EC Treaty. The Commission found that the applicant and its legal predecessors took measures to restrict parallel trade, restricted the supply of passenger motor vehicles to leasing companies as stock, and was party to agreements restricting the grant of discounts in Belgium.

The applicant claims that the Mercedes-Benz agents are integrated in the Mercedes-Benz distribution organisation and that agreements with commercial agents and commission agents are genuine agency agreements to which the prohibition on restrictive practices set out in Article 81(1) EC does not apply. The applicant further submits that everything of which the Commission accuses Mercedes-Benz regarding the obstruction of exports from Germany fails to meet the conditions laid down in Article 81(1) EC. Mercedes-Benz is entitled to lay down rules for both its commercial agents and its dealers on sales to non-resident persons. Irrespective of the foregoing, the applicant claims that the documentary evidence does not establish that Mercedes-Benz obstructed cross-border sales to foreign consumers. Mercedes-Benz's sole interest was in restricting transactions with non-authorised resellers.

The applicant claims that its instruction to agents to require a 15 % advance payment from foreign customers was not a part of any agreements in restraint of trade between Mercedes-Benz and its agents. The purpose of that instruction was to reduce Mercedes-Benz's risk exposure and it concerned the conditions applicable to contracts for new cars, which were merely negotiated by the agent and in which he did not participate. Irrespective of the foregoing, the applicant claims that the requirement of deposits from foreign customers is materially justified.

The applicant further claims that the restrictions on German agents as regards the brokerage of sales of new cars to leasing companies do not infringe Article 81(1) EC because they constitute permissible instructions to commercial agents. Even if there were an infringement of Article 81(1) EC, it would in any case be exempted under Article 81(3) EC in conjunction with Regulation No. 1475/95 [1].

Furthermore, the applicant submits that Mercedes-Benz did not carry out, or participate in, any 'sale-price fixing' in Belgium which can be imputed to the applicant. Finally, it claims that the special status of commercial agents is in itself enough to preclude the imposition of a fine on the basis of the 'German' facts, and that, in any case, it was entitled to assume, on the basis of earlier statements by the Commission, that its previous practice did not infringe Article 81(1) EC. In addition, the applicant submits that even if the application of Article 81(1) is not precluded on legal grounds, the fine is, in any case, clearly excessive.

[1] Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1995 L 145 p. 25)