

Pleas in law and main arguments

By the contested decision, the Commission imposed a fine of EUR 28 million on the applicant for infringement of Article 81(1) EC. In that decision, the Commission found that agreements had been concluded between various German banks, including the applicant, concerning the type and amount of bank charges, the agreements in question having been aimed, during the transitional period, at fixing the way in which charges were to be made for exchanging bank notes in the currencies of the countries taking part in monetary union, in the form of a percentage, together with a target price of around 3 %.

The applicant denies that it took part in an agreement contrary to Article 81(1) EC. It maintains that the evidence produced by the Commission in that regard is insufficient. In addition, the Commission failed to show the effects of the alleged agreement on trade between Member States.

The Commission wrongly assumed that there was an ongoing infringement. The calculation of the fine is wrong, because the Commission did not carry out any assessment of the applicant's individual conduct.

In the course of the procedure, the Commission infringed the applicant's rights of defence, inasmuch as it refused to allow the applicant to have sight of the files relating to the circumstances resulting in the decision to discontinue the procedure against other banks and did not, in the contested decision, examine the statements made by the applicant in its response to the main points raised in the complaint and in the oral hearing.

The imposition of a fine on the applicant exceeds the Commission's discretionary power and discriminates against the applicant by comparison with those entities who were the subject of the complaint and on whom it was decided not to impose a fine. The Commission should likewise have decided to discontinue the procedure as against the applicant.

Action brought on 27 February 2002 by Manfred Danzer and Hannelore Danzer against the Council of the European Union

(Case T-47/02)

(2002/C 109/117)

(Language of the case: German)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 27 February 2002 by Manfred Danzer and Hannelore Danzer, Linz (Austrian Republic), represented by J. Hintermayr, M. Krüger, F. Haunschmidt, G. Minichmayr and P. Burgstaller.

The applicants claim that the Court should:

- order the defendant to pay EUR 1852721 to the applicants' legal representatives within 14 days and declare Article 2(1)(f) of Council Directive 68/151/EEC of 9 March 1968⁽¹⁾ and Article 47 of Council Directive 78/660/EEC of 25 July 1978⁽²⁾ to be contrary to European Community law;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicants are managing directors of various Austrian companies. They claim that the obligation to disclose the annual accounts of companies limited by shares and equivalent partnerships is incompatible with primary Community law, the fundamental rights guaranteed by the Community and the case-law of the Court of Justice of the European Communities. On those grounds the applicants have to date refused to disclose the annual accounts in the requisite form for the companies for which they are responsible. By the time this action was brought fines of EUR 1 852 721 had been imposed on the applicants.

The applicants submit that the disclosure required by the directives in question entails the disclosure of confidential business information which is contrary to EC competition law and the general principle of the protection of business and trade secrets. The publication of important and confidential business data is also disproportionate and inadmissible in the light of Article 287 EC.

The applicants argue, further, that Article 2(1)(f) of Directive 68/151/EEC and Article 47 of Directive 78/660/EEC have no basis in Article 44(2)(g) EC nor are they the type of provision which is properly covered by a 'directive' within the meaning of Article 249 EC. The provisions do not harmonise existing law but 'create' new law. Moreover, they are contrary to the principle of proportionality and breach the Austrian data protection law, the fundamental right to property, the fundamental right to freedom of economic activity and the protection of private tax matters.

Finally, the applicants submit that the objectives of the Council in the directives cited are not covered by Community law and are therefore a direct cause of the refusal to disclose the accounts, and that the causal link between the objectives of the directive and the damage caused and anticipated is thus clear.

- (1) First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968(I), p. 41).
- (2) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11).

Action brought on 27 February 2002 by Brouwerij Haacht N.V. against the Commission of the European Communities

(Case T-48/02)

(2002/C 109/118)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 February 2002 by Brouwerij Haacht N.V., established at Boortmeerbeek (Belgium), represented by Yves van Gerven, Frédéric Louis and Hendrik Viane, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul Article 4 of the decision in issue, in so far as it concerns Brouwerij Haacht N.V. and, in so far as may be necessary, order that no fine be imposed on Brouwerij Haacht N.V. or substantially reduce the fine;
- order the Commission to pay the costs in any event.

Pleas in law and main arguments

The action is directed against the decision in so far as it imposes a fine on the applicant in consequence of the private label cartel on the Belgian beer market.

The applicant claims that the Commission has failed to comply with the obligation to provide a statement of reasons as prescribed by Article 253 of the EC Treaty, and with the guidelines for the calculation of fines. According to the applicant, the Commission, in determining the actual economic power of the parties concerned, failed to define the relevant market. It maintains that the decision does not make it clear whether the relevant market is the private label market or the beer market in general. Moreover, the Commission over-estimated the economic power of the applicant in the market for private label beer, if and in so far as it is that market which is to be regarded as the relevant market. The applicant further argues that the Commission wrongly characterised the role played by the applicant in the cartel in question as an active role. According to the applicant, its role must be regarded as having been purely passive, or at least as less active.

Lastly, the applicant pleads infringement of the Notice on Cooperation and of the principle of equal treatment. According to the applicant, the Commission failed to take sufficient account of the significance of the applicant's statements proving the infringement of the rules. The Commission consequently treated similar situations in a dissimilar way, by not applying the same reduction in the fine where there was a comparable level of cooperation. Moreover, the Commission treated dissimilar situations in a similar way, by applying the same reduction in the fines imposed on the applicant and on parties who cooperated less, or not at all, in the Commission's investigation.

Action brought on 26 February 2002 by Brasserie Nationale against the Commission of the European Communities

(Case T-49/02)

(2002/C 109/119)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 February 2002 by Brasserie Nationale, established at Bascharage (Luxembourg), represented by Alexandre Carnelutti and Jean-Louis Schiltz, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul Article 1 of the Commission's decision of 5 December 2001 in Case COMP/37800/F3 — Brasseries Luxem-