Action brought on 17 April 2002 by Torraspapel SA against the Commission of the European Communities

(Case T-129/02)

(2002/C 169/65)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 17 April 2002 by Torraspapel SA, represented by Mr Onno W. Brouwer and Mr Francisco Cantos of Freshfields Bruckhaus Deringer, Brussels (Belgium).

The applicant claims that the Court should:

— annul Article 1 of the contested Decision in so far as it establishes an infringement of Article 81, paragraph 1, of the Treaty by the applicant in the period from 1 January 1992 to September 1993; and reduce the fine accordingly;

— substantially reduce the amount of the fine imposed on the applicant in Article 3 of the contested Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested Decision in the present case is the same as in case T-109/02 Bolloré/Commission [1]. By this Decision, the Defendant found that the applicant and ten other manufacturers of carbonless paper had infringed Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement by participating in a complex of agreements and concerted practices by which they fixed price increases, allocated sales quotas and fixed market shares and set up machinery to monitor the implementation of the restrictive agreements.

In support of its arguments, the applicant submits that the Commission has wrongly applied Article 81(1) of the Treaty and violated the principle of presumption of innocence, as well as an essential procedural requirement, as it has not sufficiently proven that the applicant committed an infringement of the above-mentioned provision from January 1992 until September 1993. It is stressed in this regard that such an approach does not mean that the applicant would recognise that there was an infringement concerning the period thereafter. It has however chosen not to lodge an appeal against the entire decision of the Commission.

The Commission has also breached Article 15(2) of Regulation 17/62 in that it has wrongly classed the alleged infringement as 'very serious'. Firstly, in defining the alleged cartel as 'price fixing market sharing practices', the Commission seeks to confer a disproportionate importance on the alleged market allocation practices, misrepresenting their gravity. Secondly, in classing the alleged infringement as 'very serious', the Commission does not take account of the difference between agreements fixing prices, which lead to uniform prices, and other price agreements, which do not lead to uniform prices. Moreover, the Commission has failed properly to examine the relative gravity of the infringement allegedly committed by the applicant. In short, the defendant has failed to take into consideration the fact that the applicant, as it claims, did not apply the price increases allegedly fixed and thus defeated the anti-competitive effects of the alleged cartel; in addition the Commission wrongly assessed the effective capacity of the applicant to cause damage to competition.

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[1] Not yet published in the OJ.

Action brought on 17 April 2002 by Kronopoly GmbH & Co. KG against the Commission of the European Communities

(Case T-130/02)

(2002/C 169/66)

(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 17 April 2002 by Kronopoly GmbH & Co. KG, Heiligengrabe (Germany), represented by R. Nierer, lawyer.

The applicant claims that the Court should:

— annul the Commission's decision of 5 February 2002 not to correct the decision of 3 July 2001 on planned aid No N 813/2000;

— order the defendant to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

In the contested decision, the Commission established a competitive factor of 0,75 in respect of the notified aid. In the