

The applicants claim that the Court should:

- annul Article 1 of Commission Decision C(2002) 2091 final of 11 June 2002 in Case COMP/36.571/D-1 — Austrian Banks, in so far as it relates to the applicants;
- annul the first sentence of Article 2 of the decision in so far as it relates to the applicants;
- annul Article 3 of the decision in so far as it relates to the applicants or, in the alternative, reduce the fine imposed on the applicants in Article 3;
- in the alternative to the first claim, annul the decision allowing the FPÖ (Austrian Freedom Party) as a complainant and the transmission of the statement of objections;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicants — together with six other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicants contend that the contested decision is unlawful first of all because the finding of the facts is partly incorrect, partly incomplete and therefore defective. The decision thus infringes essential procedural requirements within the meaning of the second paragraph of Article 230 EC. In addition, the decision displays numerous defects in its reasoning and contradictions. This concerns the choice of the persons to whom the decision was addressed, as a whole, and the question why the applicants were chosen on the basis of the criterion of the size of the institutions.

The applicants further contend that the decision infringes the principle of equal treatment since they were discriminated against when the persons to whom the decision was to be addressed were decided upon. They took part in the various rounds of meetings far less frequently than other banks or not at all, nor are they comparable with other banks as regards size. The Commission also infringed the principle of due process and the applicants' rights of defence.

In addition, the requirement under Article 81(1) EC that trade between States be affected is not met. The arrangements on the Austrian banking market were not capable of affecting trade between States, and no fault can be attributed to the applicants with regard to that requirement since they could assume, in particular on the basis of the legal position in Austria at that time and the participation of State authorities, that their conduct was lawful under European cartel law too. In determining the gravity of the infringement, the decision fails to have regard to the fact that no binding arrangements in the sense of a price cartel were entered into, and not a single attenuating circumstance was taken into account.

The applicants plead that a further procedural error is constituted by the decisions and measures of the Commission allowing the FPÖ (Austrian Freedom Party) as a complainant and transmitting the statement of objections to it.

**Action brought on 6 September 2002 by Krüger GmbH & Co KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case T-273/02)

(2002/C 274/60)

*(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: 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 6 September 2002 by Krüger GmbH & Co KG, Bergisch Gladbach (Germany), represented by S. v. Petersdorff-Campen, lawyer. Calpis Co Ltd, Tokyo, Japan was an additional party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of 25 June 2002, reference No R 484/2000-1;
- order the Office to pay the applicant's costs.

*Pleas in law and main arguments*

Applicant for Community trade mark:	Calpis Co, Ltd (formerly The Calpis Food Industry Co, Ltd)
Community trade mark applied for:	Word mark 'CALPICO' for goods in Classes 29, 30 and 32 — application No 225169
Owner of the opposing trade mark or sign:	The applicant
Opposing trade mark or sign right:	German word mark 'CALYPSO' for goods in Class 32
Decision of Opposition Division:	Rejection of opposition
Decision of Board of Appeal:	Dismissal of applicant's appeal
Pleas in law:	<ul style="list-style-type: none"> <li>— Likelihood of confusion between trade marks within the meaning of Article 8(1)(b) of Regulation (EC) No 40/94 <sup>(1)</sup>;</li> <li>— Infringement of the principle of the right to a fair hearing.</li> </ul>

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

**Action brought on 9 September 2002 by Athanacia-Nancy Pascall against the Council of the European Union**

**(Case T-277/02)**

(2002/C 274/61)

*(Language of the Case: French)*

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 9 September 2002 by Athanacia-Nancy Pascall, domiciled in Brussels, represented by Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the decision in the open competition COUNCIL/A/393 to give her a mark less than the minimum required for her oral test and not placing her on the reserve list;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

In support of her action, the applicant relies on a breach of the obligation to state the reasons on which the decision was based. The applicant argues that the defendant ought to have informed her of the marks that she was given in respect of the various criteria that the selection board was required to consider.

In addition, the applicant relies on the breach of the legal framework constituted by the notice of open competition COUNCIL/A/393 and the breach of the principle of equal treatment. The applicant argues that the selection board was bound to assess her general and professional knowledge and qualifications in an interview in Greek. That interview was held in other languages.

**Action brought on 16 September 2002 by Degussa AG against the Commission of the European Communities**

**(Case T-279/02)**

(2002/C 274/62)

*(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 16 September 2002 by Degussa AG, Düsseldorf (Germany), represented by R. Bechthold, M. Karl and W. Berg, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare the Commission Decision of 2 July 2002 (Case C. 373519 — Methionine) void, in so far as it concerns the applicant;