— in the alternative, reduce the fine imposed by Article 3 of the Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests the Decision of the Commission by which a fine of EUR 118 125 000 was imposed on the applicant for breach of Article 81(1) EC. The Commission claimed that the applicant and other undertakings concerned — various producers of methionine — took part in a continuous agreement and/or concerted practice. According to the Commission's findings, the applicant took part in such arrangements from February 1986 until February 1999.

The applicant submits that in setting the fine the Commission did not correctly assess the duration of the infringement. The Commission assumed that the breach lasted from 1986 until 1999. In so doing it disregarded the fact that the agreements ended in 1988, and that a fresh decision to enter into agreements was made only in 1992. The Commission has not proved that there was a single continuous breach as it alleged. Furthermore, the Commission made several errors in setting the basic amount of the fine. In assessing the breach as a 'particularly serious breach' of Article 81(1) EC it incorrectly assessed the findings required as to the specific effect on the relevant market. This must be viewed as an error of assessment and the Commission is thereby in breach of its own guidelines on setting fines.

The applicant also submits that the Commission based the fine imposed on Degussa AG on the size of the undertaking in 2001 and thereby disregarded the fact that, since the ending of the anti-competitive agreements Degussa has been involved in two mergers of undertakings. The Commission should have based its decision on the fine solely on the turnover of the part of the current undertaking which corresponds to the former Degussa AG Frankfurt am Main. In that respect the Commission infringed the principle of liability.

The applicant submits, moreover, that the Commission's method of setting the fine did not meet the constitutional requirement of certainty. In the Commission's use of Article 15 of Regulation No 17/62 the invalidity of this basis for authorisation is clear as it gives the Commission an unlimited authority to impose fines, which is not consistent with the principles concerning the certainty of legal consequences of unlawful acts.

Finally, the Commission has disregarded the presumption of innocence, as it gave information to the economic press about the expected amount of the fine even before the decision was taken and that information was even published. An unbiased decision was thus no longer possible.

Action brought on 18 September 2002 by Norma Lebensmittelfilialbetrieb GmbH & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-281/02)

(2002/C 274/63)

(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 18 September 2002 by Norma Lebensmittelfilialbetrieb GmbH & Co KG, Nürnberg (Germany), represented by S. Rojahn and St. Freytag, lawyers.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 July 2002 [1];

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark applied for:	Word mark 'Mehr für Ihr Geld' — application No 1669167
Goods or services:	Goods and services of Classes 3, 29, 30 and 35 (inter alia, bleaching preparations and other substances for laundry use, meat, coffee and marketing)
Decision contested before the Board of Appeal:	Refusal of registration by the examiner

Decision of the Board of Appeal:	Decision of the examiner set aside in so far as it applies to services in Class 35. Dismissal of the remainder of the appeal.
Pleas in law:	— Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 [2];
	— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94.

(1) Case R 239/2002-3.
(2) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 11 September 2002 by Cementbouw Handel & Industrie B.V. against the Commission of the European Communities

(Case T-282/02)

(2002/C 274/64)

(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 11 September 2002 by Cementbouw Handel & Industrie B.V., Amsterdam, Netherlands, represented by W. Knibbeler, Advocaat and O. W. Brouwer, Advocaat.

The applicant claims that the Court should:

— annul Article 1 of the contested Decision;

— annul Article 2 of the contested Decision;

— annul Article 3 of the contested Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2002) 2315, of 26 June 2002.

The applicant is active in the building materials sector. In 1999, the applicant and Franz Haniel & Cie GmbH acquired from Ruhrkohle AG its shares in certain factories which were members of the 'Coöperatieve verkoop en produktievereniging van kalkzandsteenproducenten' (CVK), a co-operative organization for Dutch calcium silicate producers. According to the contested Decision, the applicant and Franz Haniel thereby gained joint control of CVK. The Decision further states that the second set of commitments offered by the applicant and Franz Haniel are sufficient to ensure that the concentration would be compatible with the common market.

In support of its application, the applicant submits that the Commission has infringed Article 3 of Council Regulation No 4064/89 [1]. According to the applicant, the Commission erred in concluding that the applicant and Franz Haniel have joint control of CVK. The applicant furthermore claims that the Commission did not provide sufficient evidence for this conclusion and failed to give reasons for it, in breach of Article 253 of the EC Treaty.

The applicant also submits that the Commission has infringed Article 2 of Regulation No 4064/89. According to the applicant, the Commission erred in concluding that the transaction under which the shares in Ruhrkohle AG were acquired by the applicant and Franz Haniel led to a dominant position for CVK on the market for building materials for load-bearing walls in the Netherlands. Nor, the applicant claims, did the Commission provide sufficient evidence in support of this conclusion or provide a statement of its reasons for it, in breach of Article 253 of the EC Treaty.

The applicant finally claims that Article 3 and 8(2) of Regulation 4064/89 were misapplied, and the principle of proportionality was breached by the Commissions failure to accept the first set of commitments submitted by the applicant and Franz Haniel.

(1) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, p. 1) (republished in OJ 1990, L 257, p. 13).