The applicant claims that the Court should:

— annul in whole or in part, under Articles 230 EC and 231 EC, the Commission decision of 11 December 2002 (C(2002) 4831 final) on State aid granted by Greece to the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is an air transport company whose head office is in Athens. By the contested decision, the Commission declared certain restructuring aid which had been granted by Greece to the applicant to be incompatible with the common market within the meaning of Article 87(1) EC, on the ground that the conditions subject to which the aid had initially been authorised by Commission Decision 1999/332/EC were no longer met. In the decision, the Commission also declared incompatible with the common market new State aid implemented by Greece in favour of the applicant in the form of tolerance of its prolonged non-payment of social security contributions, value added tax, the airport passenger tax known as 'Spatosimo' and charges and rent which were payable by it to airports. The Commission required Greece to take all the necessary measures to recover from the applicant the abovementioned aid.

In support of its action, the applicant pleads:

— that the Commission committed manifest errors of assessment and appraisal, infringed the obligation to state reasons, erred in law, infringed the rules concerning the burden of proof and infringed the right to a fair hearing so far as concerns its conclusions that Greece failed to comply with certain of the undertakings entered into by it and referred to in Decisions 1999/332/EC and 94/696/EC. The applicant also pleads that Article 87(3)(c) EC was infringed or misapplied in that the Commission failed to examine sufficiently or correctly whether the aid authorised in 1998 could be considered compatible with that article.

— that the Commission committed manifest errors of assessment and appraisal, infringed the obligation to state reasons, erred in law, infringed the rules concerning the burden of proof, infringed the right to a fair hearing and offended against the principle of legal certainty so far as concerns its findings relating to the new aid purportedly granted by Greece to the applicant in the form of tolerance of non-payment of charges, tax and rent, as referred to above.

— that the Commission misused its powers since, in the applicant's submission, the motive for the contested decision is the desire that the 'coup de grâce' be administered to the applicant or at least that the applicant be weakened.

— The applicant further submits that the final instalment of the State aid which had been authorised by Decision 1999/332/EC was never paid to it, an omission known to, and approved by, the Commission and constituting an amendment of the restructuring programme to which the Commission had likewise agreed. On the basis of that submission, the applicant contends that the principle of the protection of legitimate expectations and an essential procedural requirement have been breached by the Commission which now pleads breach of the original programme, when that programme, with the agreement of the Commission itself, was never completed. The applicant also pleads breach of the non bis in idem rule, arguing that the non-payment of the final instalment of the State aid constitutes a penalty imposed by the Commission, which has thus exhausted its right to impose penalties and is unable to go back.

Action brought on 3 March 2003 by Tokai Carbon Co., Ltd. against the Commission of the European Communities

(Case T-71/03)

(2003/C 112/65)

(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 3 March 2003 by Tokai Carbon Co., Ltd., Tokyo, Japan, represented by Mr Gerwin Van Gerven and Mr Thomas Franchoo, Lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Article 3 of the Commission decision C(2002) 5083 final of 17 December 2002 in Case COMP/E-2/37.667 — Speciality Graphite, insofar as it imposes a fine of — 6,97 million on the applicant, or alternatively, to substantially reduce that fine; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The current application is brought against the Commission's Decision, of 17 December 2002, relating to proceedings under Article 81 of the EC Treaty and Article 53 of the EEA Agreement in Case COMP/E-2/37.667 — Specialty Graphite, in which it was found that certain undertakings, including Tokai, had infringed EC/EEA competition law by fixing prices, exchanging commercial information, fixing trading conditions and dividing customers for isostatic graphite.

The applicant, a Japanese company producing carbon products, does not contest the facts concerning its participation in the infringement. Its purpose is the annulment, or at least the substantial reduction of the fine imposed.

In support of its conclusions, the applicant submits that:

— the Commission infringed Article 253 EC, the principles of proportionality and equal treatment, and the principles of non bis in idem and the limits of its jurisdiction because it completely disregarded EEA sales and market share in determining the impact of competition of each undertaking's conduct and the level of the fine. It is stressed on this point that, as a japanese producer, the applicant has always been much less active in the EEA market because its natural market is Asia and the Far East.

— The Commission made a manifest error of assessment, by wrongly estimating the size of the relevant market, in as much as the data on which it relied in the contested Decision suggest themselves that the applicant's relevant market share is below 10 %, although Tokai Carbon Co., Ltd. is put in the category of firms who have a market share between 10 %-20 %.

— The Commission misapplied the Leniency Notice by not granting Tokai a fine reduction account of leniency under Section C, as the applicant was the first to submit decisive evidence with regard to the time periods during which UCAR International Inc.was not a participant in the cartel.

Action brought on 3 March 2003 by Toyo Tanso Co., Ltd. against the Commission of the European Communities

(Case T-72/03)

(2003/C 112/66)

(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 3 March 2003 by Toyo Tanso Co., Ltd., Osaka, Japan, represented by Mr Jean-François Bellis an Ms Stephanie Reinart, Lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— substantially reduce the amount of the fine imposed on the applicant

— order the Commission to bear the costs.

Pleas in law and main arguments

The applicant is a small company in Japan specialising in the production of specialty graphite. In the Decision of the Commission of 17 December 2002 in Case COMP/E-2/37.667 — Specialty Graphite, the Commission found that the applicant had participated together with seven other companies in an infringement of Article 81(1) EC Treaty and Article 53(1) EEA Agreement relating to isostatic specialty graphite. The applicant seeks the reduction of the fine imposed on it in Article 3 of the Decision.

The applicant submits that the Commission has violated the rights of defence of the applicant and infringed several principles of Community law, such as the principle of proportionality, equal treatment and legal certainty.

According to the applicant, the Commission was wrong to set the starting point for the calculation of the applicant's fine solely by reference to its world-wide turnover and market share. The applicant claims that the Commission has violated the rights of defence as the statement of objections indicated that the cartel outside the EEA was outside of its scope and failed to highlight the significance which the Commission would attribute to the world-wide product turnover and market share in determining the starting point for the fine. According to the applicant, the infringement had no world-wide scope and the Commission exceeded its jurisdiction in relying on this factor to determine the starting point of the calculation of the fine.