

**Action brought on 6 March 2003 by Holcim against the Commission of the European Communities****(Case T-86/03)**

(2003/C 112/74)

*(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 6 March 2003 by Holcim, a company established in Paris, represented by Marie-Pia Hutin-Houillon, lawyer.

The applicant claims that the Court should:

- order the Commission to pay EUR 1 488 287,50, corresponding to the amount of interest to be repaid to Holcim, successor to the company Cedest;
- order it to pay, in addition, default interest for the period running from 27 July 2000 until judgment is delivered in the present action;
- declare that both those amounts are to bear interest from the date judgment is delivered until full payment is made.

*Pleas in law and main arguments*

The defendant's decision 94/815/EC imposed on Cedest SA a fine of ECU 2 522 000 for infringing former Article 85(1) of the EC Treaty. Following an action for annulment brought by Cedest (Case T-38/95), the Court, by a judgment of 15 March 2000, annulled the contested decision so far as concerned Cedest. As a result of that judgment, the defendant repaid to Cedest the principal amount of the fine, but it rejected Cedest's request concerning payment of interest on that amount in respect of the period running from 7 May 1995 (payment of the fine by Cedest) to 27 July 2000 (repayment of the fine by the defendant).

The applicant has brought the present application asserting that it is the successor to Cedest following a merger. In support of its application, the applicant claims that the payment of default interest on the principal sum of the fine was a measure to implement the judgment annulling the decision which the defendant was required to adopt, even in the absence of any fault on its part. According to the applicant, the defendant's failure in this respect enables it, by virtue of the second paragraph of Article 233 of the EC Treaty, to bring an action for compensation in terms of the second paragraph of Article 288 of the EC Treaty.

**Action brought on 5 March 2003 by Intech EDM AG against the Commission of the European Communities****(Case T-87/03)**

(2003/C 112/75)

*(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 5 March 2003 by Intech EDM AG, Losone (Switzerland), represented by M. Karl, Rechtsanwalt.

The applicant claims that the Court should:

- annul the Commission's decision of 17 December 2002 (Case COMP/E-2/37.667 -Special Graphite);
- in the alternative, reduce the fine imposed by Article 3(h) of the decision;
- order the Commission to pay the costs.

*Pleas in law and main arguments*

The applicant distributes isostatically pressed special graphite, but does not itself produce it. Its activity in the European special graphite market is based on a cooperation agreement between itself and Ibiden Co. Ltd., a Japanese producer of isostatic special graphite. The Commission accused the applicant, Intech EMD BV (the former parent company of the applicant), and various producers of isostatic special graphite (including Ibiden) of taking part in a continuing agreement and/or concerted practice on the market for special graphite in the European Community and the European Economic Area. According to the Commission's finding, the applicant participated from February 1994 to May 1997 at European and regional level.

The pleas in law and main arguments are the same as in Case T-74/03 (Intech EMD BV v Commission).