

Finally, the applicant claims that the Commission failed to have regard to the principle of equal treatment and the leniency notice of 1996 by not imposing a fine on Axzo even though it was proven to have played a decisive role in implementing the unlawful conduct. In so doing the Commission afforded the applicant's main competitor an unjustified financial advantage worth millions which directly and individually concerned the applicant.

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**Action brought on 19 March 2004 by Atlantic Container Line AB, Grupo TMM SA De CV, Hanjin Shipping Co Ltd, Hyundai Merchant Marine Co Ltd, Mediterranean Shipping Co SA, Neptune Orient Lines Ltd, Orient Overseas Container Line (UK) Ltd, P&O Nedlloyd Container Line Limited and Sea-Land Service, Inc against the Commission of the European Communities**

(Case T-113/04)

(2004/C 118/98)

(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 19 March 2004 by Atlantic Container Line AB, Gothenburg (Sweden), Grupo TMM SA De CV, Tlalpan (Mexico), Hanjin Shipping Co Ltd, Seoul (South Korea), Hyundai Merchant Marine Co Ltd, Seoul (South Korea), Mediterranean Shipping Co SA, Geneva (Switzerland), Neptune Orient Lines Ltd, Singapore (Republic of Singapore), Orient Overseas Container Line (UK) Ltd, Levington (United Kingdom), P&O Nedlloyd Container Line Limited, London, and Sea-Land Service, Inc, Jacksonville (USA), represented by J. Pheasant, M. Levitt and K. Nicholson, Solicitors.

The applicant claims that the Court should:

- (a) order the Commission to pay to the applicants the sums set out in Annex A.1 to this application;
- (b) order the Commission to pay to the applicants interest at the rate of the European Central Bank for capital refinancing operations plus 2 %, or at such other rate as the Court considers to be just in all the circumstances, payable in relation to the period from the date on which each individual applicant's respective liability for costs in respect of its bank guarantee ceased (as set out in Annex A.1) until the date of the Court's judgment on this application;
- (c) order the Commission to pay to the applicants interest at such rate as the Court considers to be just in all the circumstances on such amounts as the Court orders to be paid under sub-paragraphs (b) and (c) above as from the date of the Court's judgment in this case until payment thereof;

- (d) order that the decision contained in or evidenced by the Commission's letter of 6 January 2004 be annulled;
- (e) order the Commission to pay the applicants' costs.

*Pleas in law and main arguments:*

On 16 December 1998, the Commission imposed fines on the applicants in respect of two infringements of Article 82 EC. By judgment of 30 September 2003 <sup>(1)</sup>, The Court of First Instance annulled those fines in full.

The applicants allege that they have suffered considerable monetary loss as a direct result of the Commission's unlawful imposition of the fines. According to the applicants, this loss takes the form of the costs incurred by the applicants in providing bank guarantees in lieu of payment of the fines unlawfully imposed and in maintaining those guarantees in force from the date on which they were first obtained until the date of their cancellation. The payment of a sum equal to such costs is necessary in order to restore the applicants to the legal position in which they would have been, had the Commission not unlawfully imposed such fines.

The applicant seeks an order requiring the Commission to take the 'necessary measures' required by Article 233 EC to comply with the above-mentioned judgment, by paying each of the applicants an amount equivalent to the costs incurred by each applicant respectively in the provision of its bank guarantee, together with the appropriate interest.

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<sup>(1)</sup> Judgment of 30.9.2003 in joined Cases T-191/98 and T-212/98-T-214/98, Atlantic Container Line and others/Commission (not yet published in European Court Reports).

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**Action brought on 24 March 2004 by Wieland-Werke Aktiengesellschaft against the Commission of the European Communities**

(Case T-116/04)

(2004/C 118/99)

(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 24 March 2004 by Wieland-Werke Aktiengesellschaft, Ulm (Germany), represented by R. Bechtold and U. Soltész, lawyers.

The applicant claims that the Court should: