

3. obtain and refer to the documents in case T-312/01 and adopt any other procedural measures which the Court considers appropriate.

*Pleas in law and main arguments*

By the contested decision, the Commission found that the applicants had participated in a continuous agreement and/or concerted practice in the sodium gluconate sector and had thereby infringed Article 81(1) EC and Article 53 of the EEA Agreement. As a result, fines were imposed on those undertakings.

The applicants are contesting that decision and submit that it was only Jungbunzlauer Ladenburg GmbH which was responsible for the infringement. Jungbunzlauer Austria AG and Jungbunzlauer AG did not at any time participate in the infringement and had no influence on the market behaviour or company policies of Jungbunzlauer Ladenburg GmbH. Nor, in the applicants' submission, were they liable by virtue of their association with Jungbunzlauer Ladenburg GmbH from the point of view of company law, or by virtue of their membership of the Jungbunzlauer group. Jungbunzlauer Holding AG was merely a holding company without any decisive influence on the production volume and pricing policies and thereby on the behaviour of Jungbunzlauer Ladenburg GmbH in the sodium gluconate market.

Even if Jungbunzlauer Austria AG, Jungbunzlauer AG and Jungbunzlauer Holding AG had been responsible for the infringement, which, according to the applicants, is not the case, the Commission's power to impose fines on those companies had already been lost through lapse of time.

Furthermore, the applicants claim that, in so far as the decision is addressed to Jungbunzlauer Ladenburg AG, it is defective in form and substance, because the Commission was in breach of a number of rules and principles. Among other, the Commission infringed the principles of presumed innocence and good administration by carrying out a second administrative procedure while the court proceedings relating to a decision of 2 October 2001 concerning the same cartel were still pending. By its 'second' decision of 29 September 2004, the Commission also infringed the principle of legitimate expectation and the principle of *ne bis in idem*. Moreover, the length of the proceedings was unreasonable.

With regard to the fine imposed, the applicants assert, among other, that the fine is disproportionately high and exceeds the upper limit of fines, that the Commission is mistaken in its assumption of duration, that Jungbunzlauer Ladenburg GmbH is not the ringleader and that there are extenuating circumstances due to the excessive length of the proceedings.

**Action brought on 24 December 2004 by Commission of the European Communities against IIC Informations-Industrie Consulting GmbH**

(Case T-500/04)

(2005/C 82/59)

(Language of the case: German)

An action against IIC Informations-Industrie Consulting GmbH, Königswinter (Germany), was brought before the Court of First Instance of the European Communities on 24 December 2004 by the Commission of the European Communities, represented by G. Braun, W. Wils and N. Knittlmayer, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. order the defendant to pay to the applicant EUR 181 236,61 together with interest at 4 % as from 1 November 1998;
2. order the defendant to pay the costs of the proceedings.

*Pleas in law and main arguments*

In 1996 the applicant concluded with the defendant two contracts in which the applicant undertook to grant the defendant financial aid for the implementation of two trans European cultural projects. The financial aid was intended to cover 50 % of the defendant's project costs in so far as those costs were incurred and claimed in a contractually permissible manner. In 1997, on the basis of those contracts, the defendant received a sum totalling DM 400 821 (EUR 204 936,52) as an advance payment of the total financial aid.

Following completion of the projects, the defendant claimed from the applicant purported project costs, the amount of which it intended to deduct from the financial aid paid in advance. However, the applicant carried out a check and came to the conclusion that the defendant was entitled only to financial aid totalling DM 46 300,18 (EUR 23 672,91) for both projects. The applicant therefore claims repayment of the remaining sum of EUR 181 263,61 (DM 354 520,82).