

The applicant also challenges its placement in the second category for determination of the basic amount, and the size of the basic amount imposed. According to the applicant, the Commission overrated the possibility of the applicant having a real impact on competition, both in an absolute sense in comparison with the impact of the other undertakings involved but also in the light of the applicant's precarious financial situation and the limited size of the market. It also submits in that connection that the Commission infringed the principle of fairness and proportionality, Article 23(3) of Regulation 1/2003, the Guidelines on the method of setting fines and the obligation to state reasons.

According to the applicant, the Commission also wrongly assessed attenuating circumstances in relation to the applicant and infringed the Guidelines on the method of setting fines and the obligation to state reasons. The Commission ought to have taken into account as attenuating circumstances the fact that the applicant did not implement the agreements made and that it had played a very limited and passive role.

According to the applicant, a much too small a reduction in the fine imposed was granted to it on account of its cooperation with the investigation, in breach of the obligation to state reasons, the principle of equality and proportionality and the Leniency Notice.

Finally, the applicant seeks compensation for the damage suffered by it as result of the Commission's infringement of the principle of the protection of legitimate expectations and the obligation of secrecy, by publishing the applicant's internal price lists.

(<sup>1</sup>) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1)

## Action brought on 20 December 2005 — Sumimoto Chemical Agro Europe and Philagro France v Commission

(Case T-454/05)

(2006/C 60/84)

*Language of the case: English*

### Parties

*Applicants:* Sumitomo Chemical Agro Europe SAS (Lyon, France) and Philagro France SAS (Lyon, France) [represented by: K. Van Maldegem, C. Mereu, lawyers]

*Defendant:* Commission of the European Communities

### Form of order sought

- Order the annulment of Commission Decision D/430967; or, in the alternative,
- order the defendant to comply with its obligations under Community law and propose the inclusion of procymidone in Annex I to the PPPD for all uses/crops, as requested by the applicants;
- order the defendant to compensate the applicants in the provisional amount of 1 (one) Euro for damages suffered as a result of Commission Decision D/430967, or, in the alternative, as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicants, as well as any applicable interests, pending the exact calculation and determination of the exact amount;
- order the defendant to pay all costs and expenses in these proceedings.

### Pleas in law and main arguments

Council Directive 91/414 (<sup>1</sup>) concerning the placing of plant protection products on the market (known as the 'plant protection products directive' or 'PPPD') provides that Member States shall not authorise a product unless it is inscribed in Annex I of the Directive. The applicants have repeatedly contacted the Commission with a view to ensuring that procymidone, the active substance contained in their plant protection products, should be included in Annex I.

By letter of the 20 October 2005, which constitutes the contested Decision, the Commission informed the first applicant that possible inclusion of procymidone in Annex I would, at most, cover the supported uses that have been the subject of EU evaluation; it further makes such inclusion conditional on the submission of a proposal for highly detailed conditions of use and risk mitigation measures.

The applicants request the annulment of that Decision, criticizing the proposed limited authorisation of procymidone, which would lead to it being registered only for two crops, namely plums and cucumbers, as well as the requirement for highly detailed conditions of use. According to the applicant, these requirements violated the PPPD which only refers to broad use categories, such as insecticides, growth regulators or herbicides, leaving it to the Member States to assess use in relation to specific crops. In the same context the applicants allege that the requirement for detailed conditions is neither allowed under the PPPD nor scientifically justified.

The applicants further submit that the contested Decision errs when it states that studies submitted after the fixed deadlines cannot be examined because, according to the applicants, all procymidone data were timely submitted. They also consider that the contested Decision violates Articles 95(3) and 152(1) EC by refusing to consider studies submitted in time and found satisfactory by the evaluators.

The applicants also invoke violations of the PPPD, of Regulation 3600/92 <sup>(2)</sup>, of the principles of sound administration, of subsidiarity and proportionality, of legitimate expectations and legal certainty, of the excellence and independence of scientific advice, of equal treatment and 'estoppel' and of the duty to state reasons.

Should the court consider that the contested letter is not an act which can be challenged under Article 230(4) EC, the applicants submit that their action is still admissible under Article 232 EC against the Commission's failure to act upon their administrative complaint and formal request. In addition and independently of the actions for annulment and failure to act, the applicants claim compensation for damages suffered as a direct consequence of the contested letter.

<sup>(1)</sup> OJ L 230, 19/08/1991, p. 1.

<sup>(2)</sup> Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8 (2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market, OJ L 366, 15/12/1992, p. 10

## Action brought on 30 December 2005 — Gütermann v Commission

(Case T-456/05)

(2006/C 60/85)

*Language of the case: German*

### Parties

*Applicant:* Gütermann Aktiengesellschaft (Gutach-Breisgau, Germany) (represented by: J. Burrichter, B. Kasten and S. Orlikowski-Wolf, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

The applicant claims that the Court should:

- annul Article 1(1) of the Decision in so far as it declares that the applicant infringed Article 81 EC and Article 53 of the EEA Agreement as regards Sweden, Norway and Finland also in the period from January 1990 up to and including December 1993;
- annul Article 2 of the Decision in so far as it imposes a fine of EUR 4,021 million on the applicant;
- in the alternative, reduce as appropriate the fine imposed on the applicant in Article 2 of the Decision;
- order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

The applicant is challenging Commission Decision C(2005) 3452 final of 14 September 2005 in Case 38.337 — PO/Thread (amended by the defendant's decision of 13 October 2005). In the contested decision a fine was imposed on the applicant for infringement of Article 81 EC and Article 53 of the EEA Agreement.

In support of its application the applicant is relying on four pleas in law.

First, it alleges breach of Article 7 of Regulation No 1/2003. <sup>(1)</sup> In this connection it submits that the finding as to the duration of the infringements in Article 1(1) of the contested decision is incorrect.

In its second plea in law the applicant submits that there has been an infringement of Article 15(2) of Regulation No 17/1962 <sup>(2)</sup> or of Article 23(2) of Regulation No 1/2003. It considers that Article 2 of the contested decision infringes fundamental principles regarding the assessment of fines. In addition, it is submitted that those provisions were infringed by Article 2 of the contested decision due to misapplication of the 1996 Leniency Notice.

Lastly, the applicant submits that Article 2 of the contested decision amounts to an infringement of the principle of proportionality as insufficient regard was had to the individual position of the applicant in fixing the fine.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

<sup>(2)</sup> EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87).