

Form of order sought

- Declare Article 1.1(a) of Commission Decision C(2005) 4012 final, of 20 October 2005, relating to a proceeding under Article 81(1) EC (Case COMP/C.38.281/B.2 — Raw Tobacco Italy) partially null and void to the extent that it refers to a longer duration of the infringement (which is deemed to be terminated on 19 February 2002 instead of 15 January 2002, at the latest);
- declare Article 2(b) of the Contested Decision null and void to the extent that MINDO should have been granted full immunity from fines under the Leniency Notice, or in the alternative, the amount of the fine imposed on MINDO and on a joint and several basis to 'Alliance One International' should be substantially reduced;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By the contested Decision the Commission found that several companies, including the applicant, infringed Article 81(1) EC by way of agreements and/or concerted practices in the Italian raw tobacco sector. The applicant requests the partial annulment of this Decision invoking, firstly, an alleged infringement of its legitimate expectations regarding the application of the Leniency Notice. The applicant contests the Commission's rejections of its application to benefit from immunity on the grounds that another company, and not the applicant, was entitled to immunity. According to the applicant, that other company did not comply with the requirements of the Leniency Notice whereas the Commission failed to prove that the applicant did not comply with the same requirements.

In the alternative, the applicant contends that its participation to the infringements ceased on 15 January 2002 at the latest, rather than on 19 February 2002, and that the fine imposed on it should be reduced accordingly on this basis.

Further, the applicant considers that the Commission violated the principles of proportionality and legal certainty as well as the duty to state reasons regarding the assessment of the scope of the applicant's restrictive conduct. According to the applicant, the Commission failed to take into account that it participated in agreements regarding the purchase price and the quantities of surplus production only in 1998 and 1999 and that it did so in the context of interprofessional agreements authorised under Italian legislation.

The applicant also invokes an infringement of the rights of defence as well as of the principles of proportionality and legitimate expectations in the calculation of the basic amount of the fine. In this context the applicant alleges that the basic amount of the fine materially exceeds the total value of the products which were affected by the cartel practices; that the Commission has erred in the assessment of the two potential effects of the restrictive practices cited in the contested Decision; that those two potential effects are new to the contested Decision and had not been stated in the Statement of Objections; and that the Commission mistakenly applied a multiplying factor in

order to calculate the basic amount of the fine without taking into consideration that at the time of the contested Decision's adoption the applicant was not part of any large multinational undertaking.

Further, the applicant invokes an infringement of the duty to state reasons and the principles of legal certainty and of legitimate expectations in connection with the Commission's alleged failure to take certain mitigating factors into account, notably the early termination of the infringing conduct and the minimal effects of the restrictive practices attributed to the applicant.

Finally, the applicant also invokes an infringement of the principles of proportionality and of legitimate expectations as well as the duty to state reasons in the application of section 5(b) of the Commission's guidelines, regarding the specific economic and social context in which the restrictive practices took place. It also alleges that the Commission failed to take into consideration, when setting the amount of the fine, its extremely fragile economic situation and its ability to pay.

Action brought on 24 January 2006 — Alliance One International v Commission

(Case T-25/06)

(2006/C 60/93)

Language of the case: English

Parties

Applicant: Alliance One International, Inc. (Danville, USA)
[represented by: C. Osti, A. Prastaro, lawyers]

Defendant: Commission of the European Communities

Form of order sought

- Annul Article 1.1(a) of Commission Decision C(2005) 4012 final, of 20 October 2005, relating to a proceeding under Article 81(1) EC (Case COMP/C.38.281/B.2 — Raw Tobacco Italy) insofar as it relates to SCC, Dimon Inc. and Alliance One;
- accordingly reduce the fines imposed on Transcatab and Dimon Italia- Mindo so that the fines do not exceed 10 % of their turnover in the latest financial year;
- alternatively, reduce the fine imposed on Transcatab and Dimon Italia- Mindo as the multiplying factor is not applicable;
- order the Commission to pay the costs.

Pleas in law and main arguments

By the contested Decision the Commission found that several companies, including the applicant and its subsidiaries, Transcatab and Dimon Italia, later renamed Mindo, infringed Article 81(1) EC by way of agreements and/or concerted practices in the Italian raw tobacco sector.

The applicant requests the partial annulment of this Decision arguing, firstly, that by holding it jointly and severally liable for the infringement committed by its subsidiaries, the Commission breached the rules regulating responsibility of parent companies. The applicant contests in this context the arguments and the evidence cited by the Commission in support of its finding.

The applicant also considers that the Commission breached Article 23(2) of Regulation 1/2003⁽¹⁾ by imposing fines which exceed 10 % of the total turnover of its subsidiaries.

Finally, the applicant considers that the Commission should not have applied a multiplying factor to its subsidiaries as this was not justified on the basis of the parties' turnovers and the Commission's decisional practice. It further argues that the multiplying factor applied to it is higher than that applied to another undertaking leading to an evident violation of proportionality and lack of reasoning. The applicant also submits that the reasoning for the application of a multiplying factor to Mindo is inconsistent as it applies different criteria to determine the same fine.

⁽¹⁾ 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 L 1, 04/01/2003 p. 1.

Action brought on 24 January 2006 — Universal v Commission

(Case T-34/06)

(2006/C 60/94)

Language of the case: English

Parties

Applicant: Universal Corp. (Richmond, USA) [represented by: A. Riesenkampff, T. Reher, M. Holzhäuser, C. Swaak, M. Mollica, avocats]

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission Decision C(2005) 4012 final, of 20 October 2005, relating to a proceeding under Article 81(1) EC (Case COMP/C.38.281/B.2 — Raw Tobacco Italy) insofar as it is addressed to the applicant;
- order the Commission to pay the costs.

Pleas in law and main arguments

By the contested Decision the Commission found that several companies, including the applicant and one of its indirect subsidiaries, infringed Article 81(1) EC by way of agreements and/or concerted practices in the Italian raw tobacco sector. On this basis, it imposed a fine on the applicant, jointly and severally with its subsidiary.

In support of its application the applicant contends, firstly, that in the contested Decision the Commission adopted, without giving any explanation or objective justification, a diametrically opposed position to its own position in the Spanish raw tobacco case which involved the same parent/subsidiary relationship, the same time frame, the same commodity, the same buying prices and the same lack of involvement or knowledge by the applicant. On this basis the applicant considers that the Commission violated its obligation to state reasons, disregarded the principle of equal treatment and violated the applicant's legitimate expectations by imposing a fine on it for the infringement of its subsidiary.

The applicant further argues that the Commission failed to prove to the requisite legal standard any decisive influence by the applicant on the commercial behaviour of its subsidiary. In this context, it submits that the Commission wrongly considered that requirements for reporting and for certain approvals confirm its exercise of decisive commercial influence over its subsidiary whereas this was not the case, due to the applicant's very decentralised structure and organisation.

Order of the Court of First Instance of 16 January 2006 — Germany v Commission

(Case T -389/04)⁽¹⁾

(2006/C 60/95)

Language of the case: German

The President of the First Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 300, 4.12.2004.