

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.