— annul Decision C(2005) 4634 final, of 30 November 2005, in Case COMP/F/38.354 — Industrial bags, alternatively substantially reduce the amount of the fine imposed on Plásticos Españoles S.A.;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action seeks annulment of Decision C(2005) 4634 final, of 30 November 2005, in Case COMP/F/38.354 — Industrial bags. In the contested decision, the Commission declared that the applicant, among other undertakings, had infringed Article 81 EC by having participated, between 1991 and 2002, in agreements and concerted practices in the industrial plastic bag sector in Germany, Belgium, the Netherlands, Luxemburg, Spain and France. For those infringements, the Commission imposed a fine on the applicant jointly and severally with the undertaking Armando Álvarez S.A..

In support of its claims the applicant puts forward the following pleas:

— error in the assessment of the facts by the Commission in relation to the scale of the applicant's conduct, to the scope of the product markets and geographic markets concerned and the product quotas which serve as a basis for calculating the fines;

— violation of Article 81(1) EC and the principle of legal certainty, on account of incorrect classification of the infringement as 'single and continuous' and incorrect determination of the responsibility of the undertakings sanctioned;

— in the alternative, violation of Article 81(1) EC and the principle of legal certainty and equal treatment on account of incorrect classification of the infringement as 'single and continuous' with respect to the applicant, incorrect assessment of the applicant's individual liability and discrimination as between itself and the undertaking Stempher B.V. which, according to the Commission, had also participated in the infringement in question;

— infringement of Article 15(2) of Regulation No 17/1962 ([1]) and the Guidelines on the method of setting of fines on account of manifest error in the calculation of the fine imposed on the applicant and a manifest infringement of the principle of equal treatment and proportionality in determining the amounts.

([1]) EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (English special edition: Series I Chapter 1959-1962 p. 87)

Action brought on 3 March 2006 — Budapesti Erőmű v Commission

(Case T-80/06)

(2006/C 108/46)

Language of the case: English

Parties

Applicant: Budapesti Erőmű 'Zártkörűen Működő Részvénytársaság' (Budapest, Hungary) [represented by: M. Powell, Solicitor, C. Arhold, K. Struckmann, lawyers]

Defendant: Commission of the European Communities

Form of order sought

— Annul the Decision of the European Commission to open the formal investigation procedure in Case State aid C 41/2005 (ex NN 49/2005) — Hungarian Stranded Costs — of 9 November 2005, or in the alternative to annul the Decision as far as the power purchase agreements concluded by the applicant are concerned;

— to award the applicant the costs of the present action;

— to take such other or further action as justice may require.

Pleas in law and main arguments

The applicant is a district heating supplier and electricity generator in Hungary. In the contested decision, the Commission decided to open a formal investigation procedure into alleged new State aid in the form of power purchase agreements concluded between Hungarian electricity generators and the public Hungarian transmission operator ([1]).

In support of its application, the applicant submits that the Commission lacked competence to take the contested decision. According to the applicant, it follows from Annex 4, Chapter 3, Section 1 of the Accession Treaty ([2]) and Article 1(b) of Council Regulation No 659/1999 ([3]) that the Commission only has jurisdiction over aid measures which are still applicable after the date of accession of a new Member State. The applicant submits that the power purchase agreements were concluded prior to accession and are not still applicable after accession.

The applicant furthermore submits that the Commission committed a manifest error of law and appreciation by opening the formal investigation procedure without having objective grounds for finding that the applicant's power purchase agreements contain State aid. According to the applicant, the Commission failed to assess the nature of the applicant's power purchase agreements in the light of the circumstances at the time they were concluded, made an inadequate assessment of the notion of economic advantage and of the notion of distortion of competition and impact on trade within the meaning of Article 87(1) EC.

The applicant also submits that the Commission has erred in finding that the power purchase agreements contain new aid, as they were concluded prior to the opening of the Hungarian electricity market.

Finally, the applicant claims that the contested decision's reasoning is inadequate.

([1]) State aid — Hungary — State aid No C 41/2005 (ex NN 49/2005) — Hungarian Stranded Costs — Invitation to submit comments pursuant to Article 88(2) of the EC Treaty (Text with EEA relevance) (OJ 2005 C 324, p. 12)

([2]) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Annex IV: List referred to in Article 22 of the Act of Accession - 3. Competition policy (OJ 2003 L 236, p. 797)

([3]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ L 83, p. 1)

Action brought on 14 March 2006 — Apple Computer International v Commission

(Case T-82/06)

(2006/C 108/47)

Language of the case: English

Parties

Applicant: Apple Computer International (Cork, Ireland) [represented by: G. Breen, Solicitor, P. Sreenan, SC, B. Quigley, BL]

Defendant: Commission of the European Communities

Form of order sought

— Declare that the classification contained in item 2 of the Annex to Commission Regulation (EC) No 2171/2005 in fact represents a decision, which although in the form of a regulation, is of direct and individual concern to the applicant;

— annul Commission Regulation (EC) No 2171/2005 concerning the classification of certain goods in the Combined Nomenclature (OJ L 346, p. 7) in so far as it classifies the colour monitor of the liquid crystal device type described in item 2 of the table in the annex to that regulation under CN Code 8528 21 90;

— declare that monitors meeting the technical specifications contained in item 2 of the annex to the contested Regulation are properly classified in heading 8471 of the Combined Nomenclature;

— order the Commission of the European Communities to bear the costs of the present proceedings.

Pleas in law and main arguments

The contested Regulation classifies four Liquid Crystal Displays (LCDs) at two different CN codes in the Combined Nomenclature. The applicant notes that, although the device referred to at item 2 in the annex to the contested regulation (the device) is not identified as the applicant's product, the technical characteristics and description contained therein conclusively identify the product as being the Apple 20″ LCD.

The applicant submits that by classifying its 20″ LCD at heading 8528, the Commission has infringed Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff ([1]) and committed a manifest error in the interpretation of the Community rules on tariff classification.

The applicant submits that the device satisfies, pursuant to heading 8471, as interpreted in Legal Note 5 to Chapter 84 of the Combined Nomenclature, the criteria for classification as a 'unit' of an automatic data-processing machine, is of a kind solely or principally used in an automatic data-processing machine and, moreover, is not capable of performing a specific function other than data processing. According to the applicant, the classification under heading 8528 therefore constitutes a manifest error of interpretation of the Community rules on tariff classification.

Finally, the applicant claims that the contested classification is in direct conflict with the Judgment of the European Court of Justice in Case C-11/93 *Siemens Nixdorf v Hauptzollamt Augsburg* [1994] ECR I-1945.

([1]) OJ L 256, p. 1