

### Pleas in law and main arguments

The applicants argue that the following elements of the decision are based on errors of law and errors of assessment:

- (a) the finding that Shell Verkoopmaatschappij BV was an instigator and leader of the cartel;
- (b) the attribution of liability for the infringement to The Shell Transport and Trading Company Ltd and Shell Petroleum NV;
- (c) the increase in the fine for repeated infringement;
- (d) the calculation of the starting amount for Shell Nederland Verkoopmaatschappij BV;
- (e) the duration of the infringement.

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### Action brought on 4 December 2006 — TOTAL v Commission

(Case T-344/06)

(2007/C 20/24)

*Language of the case: French*

### Parties

*Applicant:* TOTAL SA (Courbevoie, France) (represented by: A. Gosset-Grainville, L. Godefroid and A. Lamothe, avocats)

*Defendant:* Commission of the European Communities

### Form of order sought

- annul, pursuant to Article 230 EC, the Commission Decision of 13 September 2006 in Case COMP/F/38.456 — Bitumen — Netherlands) in so far as it concerns TOTAL SA in Articles 1(m), 2(m), 3 and 4;
- alternatively, annul Articles 1(m) and 2(m) and reduce accordingly the amount of the fine imposed on TOTAL SA by the decision;
- order the Commission to pay the costs.

### Pleas in law and main arguments

The applicant seeks the partial annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 EC (Case COMP/F/38.456 — Bitumen — Netherlands) concerning a body of agreements and concerted practices designed to fix, for sales and purchases of road bitumen in the Netherlands, the gross price, a uniform rebate on the gross price for participating road builders and a

smaller maximum rebate on the gross price for other road builders. Alternatively, it seeks the annulment or at least a substantial reduction in the amount of the fine imposed on it by the contested decision.

The application contains five pleas.

First, the applicant states that the Commission infringed the rules relating to the accountability of a parent company for the practices of its subsidiary. It claims that the Commission acted wrongly when it attributed to the applicant the infringement at issue which was committed by its subsidiary TOTAL Nederland NV and, therefore, held the applicant jointly and severally liable for the infringements. The applicant considers that the Commission committed an error of law in finding that the fact that the applicant held 100 % of the capital of its subsidiary was sufficient for it to have decisive influence over it. The applicant also alleges that the Commission committed an error of law in failing to undertake a serious examination of all the evidence showing which entities within the TOTAL Group might have been responsible for the practices at issue.

Secondly, the applicant accuses the Commission of infringing the rules of evidence in failing to prove that the applicant exercised a decisive influence over the commercial policy of its subsidiary, TOTAL Nederland NV, on the relevant market, and in failing to take account of information which TOTAL SA submitted to enable it to delineate the undertaking in the TOTAL Group which was concerned.

Also, the applicant considers that the Commission infringed the principle that it must not act in an arbitrary manner, when it stated in the contested decision that it had a discretion when deciding which entities within an undertaking it considered to be responsible for an infringement.

Finally, the applicant states that the Commission infringed the principle of good administration in failing to send requests for information to the applicant during the investigation stage.

Alternatively, the applicant relies on two pleas in support of its application for annulment or at least reduction of the fine imposed on it in the contested decision. It considers that the Commission infringed the rules applicable to the setting of fines. It states that, if the acts should have been imputed to TOTAL SA, the date taken by the Commission to fix the starting point for the applicants' participation in the infringement is not correct and the Commission has failed to give sufficient grounds for its decision on this point. The applicant claims moreover that the Commission failed to respect the principle of proportionality when it applied a multiplier for deterrence of 1.5, based on the worldwide turnover of TOTAL Group for the period of reference, despite the fact that no ground for complaint was attributed to the applicant for a part of the said period.

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