

In their first plea, the applicants claim that the Commission committed a manifest error of law and fact because it applied a wrong legal standard in holding KPC and KPI liable for acts of KPN and because it failed to provide adequate evidence under the correct legal standard. Precisely, it is claimed that the Commission, in the contested decision, found that both KPC and KPI are liable for the involvement of KPN's managers in the Dutch bitumen cartel on the grounds that KPN is a wholly-owned subsidiary of KPC and that each of KPC and KPI exercise broad supervisory powers over KPN. The applicants submit that a parent company may not be held liable on the basis of shareholdings and broad supervisory powers alone, and that the Commission must establish that the parent company exercised sufficient control over the subsidiary's conduct on the market affected by the infringement that it would be reasonable to assume that the subsidiary did not act autonomously with respect to the infringement.

The applicants further submit, in their second plea, that the contested decision should be annulled or, in the alternative, the fine reduced, because the Commission allegedly erred as a matter of law in fining the applicants in contravention to the 2002 Leniency Notice ⁽¹⁾, which provides that, when a leniency applicant provides evidence relating to facts that were previously unproven and those facts have a direct bearing on the gravity or duration of the cartel, the Commission may not use such facts against the leniency applicant.

Finally, in their third plea, the applicants submit that the Commission committed a manifest error of assessment in determining the percentage of the reduction in the fine pursuant to the 2002 Leniency Notice, and accordingly argue that the fine should be reduced by the maximum amount of 50 %.

⁽¹⁾ Notice on Immunity from Fines and Reduction of Fines in cartel cases, OJ (2002) C 45, p. 3.

Action brought on 14 December 2006 — IMI and Others v Commission

(Case T-378/06)

(2007/C 20/46)

Language of the case: English

Parties

Applicants: IMI plc (Birmingham, United Kingdom), IMI Kynoch Ltd (Birmingham, United Kingdom), Yorkshire Fittings Limited

(Leeds, United Kingdom), VSH Italia Srl (Bregnano, Italy), Aquatis France SAS (La Chapelle St. Mesmin, France), and Simplex Armaturen + Fittings GmbH & Co. KG (Ravensburg, Germany) (represented by: M. Struys and D. Arts, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul Articles 2(b)1. and 2(b)2. of the decision of the Commission of 20 September 2006 as amended by the decision of the Commission of 29 September 2006 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings — C(2006) 4180 final);
- alternatively reduce the fines imposed on the applicants; and
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings, by which the Commission found that the applicants, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information.

In support of their application, the applicants submit that the Commission has violated the principles of proportionality and of non-discrimination as the fine imposed on the applicants in the contested decision is excessive in terms of the size of the applicants as well as of the relevant market when compared to the Commission's approach in its previous decisions. By including sales of press fittings in the size of the relevant market for the purpose of assessing the gravity of the infringement, the Commission has committed a manifest error of assessment.

The applicants further submit that the Commission committed a manifest error of assessment by considering that the applicants did not provide the evidence of the link between the UK and pan-European arrangements. The Commission provided an inadequate statement of reasons in that regard. Furthermore, by refusing to grant the applicants a reduction in their fines for their cooperation outside the Leniency Notice ⁽¹⁾ for providing evidence of a link between the UK and the pan-European cartel, while granting the company FRA.BO a reduction in its fine on the same basis for providing evidence of post-inspection continuation, the Commission breached the principle of equal treatment.

Moreover, the applicants contend that the Commission breached Article 253 EC as the contested decision does not provide any statement of reasons for imposing an additional amount of EUR 2.04 million on the applicants Aquatis France and Simplex Amaturen + Fittings.

Finally, the applicants allege that, by imposing a separate fine upon Aquatis France and Simplex Amaturen + Fittings in addition to the fine already imposed on each of their predecessors and current parent companies, the Commission breached the principle 'non bis in idem' according to which no one can be condemned twice for the same offence.

(¹) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3)

Action brought on 15 December 2006 — Vischim v Commission

(Case T-380/06)

(2007/C 20/47)

Language of the case: English

Parties

Applicant: Vischim Srl. (Milan, Italy) (represented by: C. Mereu, K. Van Maldegem, lawyers)

Defendant(s): Commission of the European Communities

Form of order sought

- Partial annulment of Commission Directive 2006/76/EC, in particular Article 2, paragraph 2 thereof;
- order the defendant to comply with its obligations under Community law and provide for accurate, reasonable and legally acceptable prospective time limits; and
- order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

By means of its application, the applicant seeks partial annulment of Commission Directive 2006/76/EC (¹), of 22 September 2006, and in particular its Article 2, paragraph 2, insofar as the amended specification of the active substance Chlorothalonil listed in Annex I to Directive 91/414/EEC (²) concerning the placing of plant protection products on the market (hereinafter, the 'PPPD') has not provided for reasonable time limits in line with those given to other active substances under the current review and instead provides for retroactive application of its provisions.

The applicant claims that the Commission violated its legal rights and legitimate expectations as a notifier and main data submitter of Chlorothalonil within the meaning of the PPPD and its implementing regulations, since no reasonable period was granted before the amended specification of the active substance was included in Annex I during which Member States and the applicant could prepare themselves to meet new requirements. In that sense, the applicant submits that, instead of allowing for an appropriate time period for its Chlorothalonil-based product registrations to be properly assessed for re-registration purposes in Member States, the contested measure entered into force on 23 September 2006 and only prescribed retroactive application of its provisions as of 1 September 2006 by reference to situations which already had produced legal effects in the period up to 31 August 2006. Moreover, the applicant submits that the contested measure is not in conformity with the requirements established by the PPPD and that it lacks sufficient statement of reasons in terms of Article 253 EC. Finally, the applicant claims that the contested provision also discriminates between the situation of the applicant and other notifiers in the review process of existing active substances without objective justification.

(¹) Commission Directive 2006/76/EC, of 22 September 2006, amending Council Directive 91/414/EEC as regards the specification of the active substance chlorothalonil; OJ L 263, p. 9

(²) Council Directive 91/414/EEC, of July 1991, concerning the placing of plant protection products on the market; OJ 1991 L 230, p. 1

Action brought on 19 December 2006 — Icuna.com v Parliament

(Case T-383/06)

(2007/C 20/48)

Language of the case: French

Parties

Applicant: Icuna.com SCRL (Braïne-le-Château, Belgium) (represented by: J. Windey and P. de Bandt, lawyers)

Defendant: European Parliament

Form of order sought

- annul the decision of the European Parliament of 1 December 2006, accepting the tender of the firm MOSTRA and rejecting the applicant's tender within the framework of the call for tenders EP/DGINFO/WEBTV/2006/2003;