

Action brought on 16 February 2007 — Shell Petroleum and Others v Commission**(Case T-38/07)**

(2007/C 82/96)

*Language of the case: English***Parties**

Applicants: Shell Petroleum NV (The Hague, The Netherlands), Shell Nederland BV (The Hague, The Netherlands) and Shell Nederland Chemie BV (Rotterdam, The Netherlands) (represented by: T. Snoep and J. Brockhoff, lawyers)

Defendant: Commission of the European Communities

Form of order sought

SPNV requests the Court:

- to annul the decision, in full, insofar as it is addressed to SPNV;
- in the alternative:
 - to annul Article 2(d) of the decision, or
 - to reduce the fine imposed as appropriate; and
- to order the Commission to pay the costs.

SNBV requests the Court:

- to annul the decision, in full, insofar as it is addressed to SNBV;
- in the alternative:
 - to annul Article 2(d) of the decision, or
 - to reduce the fine imposed as appropriate; and
- to order the Commission to pay the costs.

SNC requests the Court:

- to annul Article 2(d) of the decision or to reduce the fine imposed as appropriate; and
- to order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, 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 agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging commercial information relating to prices, competitors and customers.

In support of their application, the applicants submit that the Commission violated Article 81 EC and Articles 7 and 23(2) and (3) of Council Regulation No 1/2003 ⁽¹⁾ by:

- a) imputing the infringement also to Shell Petroleum NV and Shell Nederland BV even though the Commission acknowledges that only Shell Nederland Chemie BV participated directly in the infringement;
- b) increasing the basic amount of the fine to be imposed on the applicants by 50 % for recidivism in breach of the principles of proportionality and legal certainty;
- c) applying a multiplier for deterrence in breach of the principles of equal treatment and proportionality; and
- d) setting the starting amount of the fine to be imposed on the applicants in breach of the Guidelines on the method of setting fines ⁽²⁾ and the principles of proportionality and equal treatment.

In the alternative, the applicants invoke a violation of the duty to state reasons under Article 253 EC.

⁽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 2003 L 1, p. 1).

⁽²⁾ Commission Notice of 14 January 1998 entitled 'Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty' (OJ 1998 C 9, p. 3).

Action brought on 6 February 2007 — ENI v Commission**(Case T-39/07)**

(2007/C 82/97)

*Language of the case: Italian***Parties**

Applicant: ENI SpA (Rome, Italy) (represented by: Prof. G.M. Roberti and I Perego, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul that part of the contested decision which holds the applicant responsible for the conduct that is being penalised;
- annul or reduce the fine imposed under Article 2 of the decision;
- order the Commission to pay the costs.