— Dow Deutschland Inc. respectfully requests the Court to annul Article 1 of the decision insofar as it finds that Dow Deutschland Inc. infringed Articles 81 EC and 53 EEA from 1 July 1996;

— all applicants (and the Dow Chemical Company in the alternative) respectfully request the Court to substantially reduce their fines;

— all applicants respectfully request the Court

  — to order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter as well as the costs incurred by the applicants in providing a bank guarantee *in lieu* of the applicants' fines pending judgment by this Court; and

  — to take any other measures that this Court considers appropriate.

Pleas in law and main arguments

By means of their application, the applicants seek partial 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 EEA by agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging sensitive commercial information relating to prices, competitors and customers in the Butadiene Rubber and Emulsion Styrene Butadiene Rubber sectors.

In support of their application, the applicants advance three principal pleas:

By the first plea, divided into three branches, The Dow Chemical Company (hereinafter 'TDCC') submits that the Commission erred in law; a) in finding that TDCC had committed an infringement based on the assumption that a wholly-owned subsidiary essentially follows the instructions given by the parent company without verifying whether the parent company had in fact exercised such power; b) in imposing a fine on it, holding it responsible for infringements committed by its subsidiaries; and c) without exercising its discretion, in deciding whether or not to address its decision to TDCC.

By the second plea, the Dow Deutschland Inc. and TDCC contend that the Commission erred in fact and law in determining the duration of Dow Deutschland Inc.'s participation in the infringement by choosing 1 July 1996 as the starting date of the infringement.

By the third plea, the applicants claim that the Commission made factual and legal errors in calculating the basic amount of the fines imposed on them. Precisely, errors were allegedly made in relation to the assessment of the gravity of the infringement, the differential treatment applied by the Commission to the starting amounts, the multiplier applied by the Commission in order for the fines to have sufficient deterrent effect and, finally, to the increase of the starting amount of the fines in view of the duration of the infringement.

Appeal brought on 14 February 2007 by Neophytos Neophytou against the judgment of the Civil Service Tribunal delivered on 13 December 2006 in Case F-22/05, Neophytou/Commission

(Case T-43/07 P)

(2007/C 82/101)

Language of the case: English

Parties

Appellant: Neophytos Neophytou (Itzig, Luxembourg) (represented by S. A. Pappas, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— Cancel the appealed decision and, subsequently, the contested decision of the appointing authority;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

By means of this appeal, the appellant is seeking to set aside the Civil Service Tribunal's conclusions in Case F-22/05 finding that, on one hand, the appellant's complaints made at the hearing were inadmissible and, on the other hand, that there was no infringement of the principle of non-discrimination.

In support of his first plea, the appellant contends that his argument concerning the composition of the selection board should have been admissible since it was based on new matters of fact which only came to light during the oral hearing according to the appellant. The latter claims, moreover, that the illegal constitution of an organ is a question of competence and thereby should have been examined ex officio. Accordingly, the appellant submits he should not have been bared from raising this new matter.

Also, the appellant argues that this complaint is directly connected to his second plea alleging infringement of the principle of non-discrimination on the grounds of unlawful composition of the selection board. On that basis, the appellant claims the Civil Service Tribunal did not properly implement the abovementioned principle, or at least failed to provide adequate reasoning for the particular features of the competition at stake; while it misunderstood his pleas and failed to address a number of them.

Action brought on 16 February 2007 — Kaučuk v Commission

(Case T-44/07)

(2007/C 82/102)

Language of the case: English

Parties

Applicant: Kaučuk a.s. (Kralupy nad Vltavou, Czech Republic) (represented by: M. Powell and K. Kuik, solicitors)

Defendant: Commission of the European Communities

Form of order sought

— Annul Articles 1 to 3 of the contested decision in whole or in part insofar as they are addressed to the applicant;

— alternatively, annul Article 2 of the contested decision insofar as it imposes a fine of EUR 17.55 million on Kaučuk and fix a substantially lower fine; and

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant seeks the partial 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 applicant, 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 its application, the applicant submits that the Commission:

— erred in law by imputing the conduct of its sales intermediary Tavorex, an independent legal entity, to the applicant;

— erred by failing to prove to the requisite legal standard that Tavorex was involved in a single and continuous infringement from November 1999 until November 2002;

— committed a manifest error of appreciation by finding the same facts sufficient to prove Tavorex's involvement but insufficient to prove the involvement of another producer;

— erred in law by applying EC competition law to the applicant and Tavorex without establishing a sufficient connection between the applicant/Tavorex, the activity concerned and the territory of the European Communities contrary to the case law on extraterritorial application of EC competition law;

— committed a manifest error of law and appreciation in finding that the applicant, through Tavorex, committed an infringement regarding butadiene rubber, a product the applicant neither produces nor sells;

— failed to establish, for the purposes of setting the fine, whether the applicant, through Tavorex, committed the infringement intentionally or negligently; and

— committed a manifest error of law and appreciation by failing to apply its Fining Guidelines.

Action brought on 16 February 2007 — Unipetrol v Commission

(Case T-45/07)

(2007/C 82/103)

Language of the case: English

Parties

Applicant: Unipetrol a.s. (Prague, Czech Republic) (represented by: J. Matějček and I. Janda, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision in whole or in part, at least as far as Unipetrol is concerned;

— otherwise exercise the Court's unlimited jurisdiction; and

— order the Commission to bear the costs of these proceedings.