Pleas in law and main arguments

The applicant lodged an action for annulment, under Article 230 EC against Commission decision of 24 January 2007 (Case COMP/F/38.899 — Gas insulated switchgear — C(2006) 6762 final), on the basis of which the Commission found the applicant, among other undertakings, liable to have infringed Article 81(1) EC and from 1 January 1994 also Article 53 EEA in the gas insulated switchgear sector (hereinafter 'GIS'), through a set of agreements and concerted practices consisting of (a) market sharing, (b) the allocation of quotas and maintenance of the respective market shares, (c) the allocation of individual GIS projects (bid-rigging) to designated producers and the manipulation of the bidding procedure for those projects, (d) price fixing, (e) agreements to cease licence agreements with non-cartel members and (f) exchanges of sensitive market information. In the alternative, the applicant applies for a cancellation or reduction of the fines imposed.

According to the applicant, the Commission appears to have based its findings on three arrangements concluding on the existence of a world-wide cartel. Even if that were the case, the applicant submits that the Commission has no jurisdiction over behaviour which might restrict competition outside the EEA.

The applicant claims that the Commission has failed to prove to the requisite legal standard that the applicant took part in any agreement or concerted practice not to sell in Europe, or that European GIS suppliers compensated the Japanese companies for not entering Europe by way of 'loading' European projects into the European 'GQ' ([1]) quota. The applicant further submits that the Commission has relied for corroboration on equally indirect, vague, unsubstantiated evidence consisting mainly of oral statements made by the leniency applicant and, in addition, has allegedly ignored evidence provided to contradict the incriminating statements.

Moreover, whereas the applicant does not deny that it was part of the 'GQ agreement' it contends that the agreement at stake was a world-wide agreement not covering Europe and over which the Commission lacked jurisdiction. The applicant claims that the Commission, in its attempt the bring the applicant under its jurisdiction, shifted the focus of its legal assessment entirely on whether there had been a 'common understanding' (that the Japanese would refrain form entering the European market that the European companies would equally refrain from competing in Japan) and whether certain European projects were systematically reported to the Japanese companies or 'loaded' into the European 'GQ' as part of this 'common understanding'. Hence, it is claimed that the Commission has not established that the applicant should be held responsible for the series of infringements at European level and has allegedly committed a manifest error of appraisal.

It is further submitted that the contested decision is vitiated by procedural irregularities. To this extent, the applicant suggests that its rights of defence have been compromised through the Commission's failure to provide adequate reasoning, to grant access to evidence and distortion of evidence.

In the alternative, the applicant submits that the Commission's failure to properly apportion responsibility between the European and Japanese companies vitiated the method used for assessing the fines for the addressees of the decision. On this account, the applicant sustains that the Commission did not properly assess either the gravity or the duration of the infringement and thus, has unfairly discriminated against the applicant.

([1]) 'G' stands for 'gear' and 'Q' for 'quota'.

Action brought on 17 April 2007 — France v Commission

(Case T-116/07)

(2007/C 140/48)

Language of the case: French

Parties

Applicant: French Republic (represented by: G. de Bergues and S. Ramet, Agents)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in its entirety;

— order the Commission to pay the costs.

Pleas in law and main arguments

By decision of 30 June 1997, adopted following a proposal from the Commission and in accordance with the procedure laid down in Council Directive 92/81/EEC ([1]), the Council authorised the Member States to apply or to continue to apply the existing reduced rates of excise duty or exemptions from excise duty to certain mineral oils when used for specific purposes. By four subsequent decisions, the Council extended that authorisation, the final authorisation period expiring on 31 December 2006. France is authorised to apply these reduced rates or exemptions to heavy fuel oil used as fuel for the production of alumina in the Gardanne region.

In a letter of 30 December 2001, the Commission notified France of its decision to initiate proceedings under Article 88(2) of the EC Treaty relating to the exemption from excise duty on mineral oils used as fuel for alumina production in the Gardanne regio ([2]). On 7 December 2005, in consequence of this procedure, the Commission adopted Decision 2006/323/EC

finding that exemptions from excise duty on mineral oils used as fuel for alumina production in the Gardanne region, the Shannon region and Sardinia, implemented by France, Ireland and Italy respectively, constituted State aid within the meaning of Article 87(1) EC that is in part incompatible with the common market, and thus ordered the Member States concerned to recover all such aid ([3]). By action brought on 17 February 2006, France sought to have that decision annulled in part in so far as it affected the exemption granted by France to the Gardanne region ([4]).

The Commission decided to extend the formal investigation procedure regarding the exemption from excise duty on heavy mineral oils used for alumina production for the period commencing 1 January 2004. After giving the Member States and the third parties concerned the opportunity to submit their observations on that matter, the Commission adopted Decision C (2007) 286 final of 7 February 2007 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in the Gardanne region, the Shannon region and Sardinia, applied by France, Ireland and Italy respectively (State aid No C 78-79-80/2001). That is the decision which is contested in the present action.

In support of its action, the applicant relies on two pleas, the first alleging infringement of the concept of State aid within the meaning of Article 87(1) EC. It submits that the Commission committed an error of law in holding that State aid existed even though not all the conditions required to establish the existence of aid, as laid down in the *Altmark* case ([5]), had been fulfilled. The applicant also submits that the decisions authorising exemptions up to 31 December 2006 were adopted by the Council following a proposal from the Commission, which, according to the applicant, should have ensured before making such a proposal that the authorisation would not lead to a distortion of competition. The applicant therefore claims that the Commission could not, on the one hand, propose that the Council adopt a decision authorising an exemption from excise duty and not object to that authorisation being extended until 31 December 2006 and, on the other hand, find that that exemption constitutes State aid incompatible with the common market as of 1 January 2004.

The second plea raised by the applicant alleges a failure to state reasons in that the contested decision does not set out arguments concerning the market in question or the position of the various undertakings in that market or relating to nature of the harm to competition or the effect on the trade in question.

([1]) Council Directive of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils
([2]) Published in OJ 2002 C 30
([3]) Decision C (2005) 4436 final, State aid Nos C 78-79-80/2001, OJ 2006 L 119, p. 12
([4]) Case T-56/06 *France* v *Commission*, OJ 2006 C 96, p. 21
([5]) Case C-280/00 *Altmark Trans* [2004] ECR I-7747

Action brought on 18 April 2007 — Areva & Others v Commission

(Case T-117/07)

(2007/C 140/49)

Language of the case: French

Parties

Applicants: AREVA SA, AREVA T&D HOLDING SA, AREVA T&D SA (Paris, France) and AREVA T&D AG (Oberentfelden, Switzerland) (represented by: A. Schild, and J.-M. Cot, lawyers

Defendant: Commission of the European Communities

Form of order sought

— annul Article 1 of the Commission Decision of 24 January 2007 in that, firstly, it holds AREVA T&D SA and ALSTOM SA jointly liable for the anti-competitive practices implemented between 7 December 1992 and 8 January 2004, and, secondly, it attributes to AREVA T&D SA, AREVA T&D AG, AREVA T&D HOLDING SA and AREVA SA joint and several liability for the anti-competitive practices implemented between 9 January 2004 and 11 May 2004;

— in the alternative, annul or substantially reduce the amount of the fine imposed on AREVA T&D SA, AREVA T&D AG, AREVA T&D HOLDING SA and AREVA SA;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present, action the applicants seek the partial annulment of Commission Decision C (2006) 6762 Final of 24 January 2007 relating to a proceeding under Article 81 of the EC Treaty and Article 53 EEA (Case COMP/F/38.899 — Gas Insulating Switchgear), concerning a cartel in the gas insulated switchgear projects sector entailing manipulation of the bidding procedure for those projects, the fixing of minimum tender prices, the allocation of quotas and of projects, and exchanges of information. In the alternative the applicants seek the reduction of the amount of the fine which was imposed on them by the contested decision.

In support of their claims, the applicants raise seven pleas in law.

The first plea in law alleges infringement by the Commission of the obligation to state reasons set out in Article 253 EC, in that the reasoning is contradictory and insufficient as regards the aspects relating, in particular, to the imputation of the anti-competitive practices, the finding that the applicants and ALSTOM SA were jointly and severally liable, and the increase in the basic amount of the fine on account of AREVA T&D SA's role as ringleader of the infringement.