Pleas in law and main arguments

The applicants 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 applicants, 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 applicants apply for a substantial reduction of the fines imposed.

The decision holds Fuji Electric Systems (hereinafter 'FES') liable for participating in the infringement from 15 April 1988 to 30 September 2002.

However, FES disputes that it participated in the GQ agreement and claims that it was not involved in the GIS sales up until 1 July 2001, around nine months after Fuji Electric Holdings ('FEH') had ceased participating in the cartel. In finding that FEH continued its participation in the GQ agreement after the Japanese members' meeting which took place around September 2000, it is submitted that the Commission committed a manifest error of assessment, an error of law with regards to the burden of proof as well as an error of law in relation to equal treatment.

Moreover, Fuji maintains that it should not be held jointly and severally liable for the involvement of Japan AE Power Systems Corporation (hereinafter 'JAEPS') in the cartel since it neither had the ability to exercise decisive influence over JAEPS nor did it have any knowledge of its alleged participation in the cartel. Hence, the applicant submits that the Commission committed a manifest error of assessment with regards to the infringement of FES.

Finally, Fuji sustains that the decision is vitiated by manifest errors of assessment with regards to the duration of the infringement as well as the liability for the alleged infringement of JAEPS. In addition, the Commission has incorrectly determined the value of the information provided by the applicants, in holding that it did not warrant a reduction of the fine imposed upon the applicants pursuant to the Leniency Notice. In this respect, Fuji claims that the fines imposed should be substantially reduced.

Action brought on 18 April 2007 — Mitsubishi Electric v Commission

(Case T-133/07)

(2007/C 140/62)

Language of the case: English

Parties

Applicant: Mitsubishi Electric Corp. (Tokyo, Japan) (represented by: R. Denton, Solicitor and K. Haegeman, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant respectfully requests:

— the annulment of the decision, in particular Articles 1 to 4 thereof, to the extent that it applies to Melco and to TMT&D for the period which Melco shares joint and several liability with Toshiba for the activities of TMT&D; or

— the annulment of Article 2(g) of the decision and Article 2 (h) insofar as it pertains to Melco; or

— the modification of Article 2 of the decision as it pertains to Melco, so as to annul or in the alternative substantially reduce the fine imposed on Melco therein; and, in any event;

— an order that the Commission pay its own costs and Melco's costs in connection with these proceedings.

Pleas in law and main arguments

The applicant, Mitsubishi Electric Corporation (hereinafter 'Melco') lodged an action for annulment, under Articles 230 and 229 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 fine imposed.

The grounds relied upon by Melco in its application are the following:

The Commission has allegedly failed to prove to the requisite standard that the applicant has infringed Article 81 EC by participating in a cartel that had as its object or effect the restriction of competition in the EEA.

The applicant claims that the Commission has failed to establish the existence of an agreement to which Melco was a party which infringed Article 81 EC.

The applicant further submits that the Commission has committed an error of assessment in disregarding the technical and economic evidence explaining Melco's lack of presence on, and proving its difficulty entering, the European market.

The applicant contends that the Commission has infringed the rules of evidence in unjustifiably reversing the burden of proof and has violated the principle of the presumption of innocence.

Moreover, the Commission has breached, according to the applicant, the principles of equal treatment and proportionality on various accounts: in calculating the starting point of the fine imposed on Melco on the basis of its 2001, not 2003, turnover; in calculating the multiplier applicable to Melco and in erroneously defining the worldwide GIS market and Melco's share of it. Furthermore, the Commission has breached the principle of proportionality, according to the applicant, in assessing the fine on Melco for its involvement in the GQ [1] agreement in the same way as it did for the European producers involved in both GQ and EQ [2] agreements.

The applicant claims that the Commission has infringed the duty to state reasons in finding that Melco's fine should be calculated on the basis of its 2001 turnover and that Melco has 15-20 % of worldwide GIS turnover.

Moreover, the Commission has allegedly breached the principle of sound administration in estimating the global GIS market value.

The applicant claims that the Commission has erred in failing to take into account economic and technical evidence when assessing the impact of Melco's behaviour and in calculating Melco's fine. The Commission also erred, according to the applicant, in determining the duration of the alleged cartel.

Furthermore, the applicant sustains that the Commission has breached the applicant's rights of defence and right to a fair hearing in failing to provide Melco with crucial exculpatory and inculpatory evidence contained in its fine. Finally, the Commission allegedly failed to put to Melco during the administrative procedure its conclusions concerning the theory of compensation, thereby infringing the rights of defence.

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

[2] 'E' stands for 'European' and 'Q' for 'quota'. The EQ Agreement is otherwise referred to in the contested decision as 'E-Group Operation Agreement for GQ-Agreement'.

Action brought on 19 April 2007 — Italy v Commission

(Case T-135/07)

(2007/C 140/63)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul, as provided for in Article 230 of the EC Treaty, the decision in the letter of 7 February 2007, prot. No. 3585, of the Director General of the Directorate-General for Agriculture of the Commission;

— order the Commission to pay the costs.

Pleas in law and main arguments

The Government of the Italian Republic has brought an action before the Court of First Instance of the European Communities to obtain the annulment, as provided for in Article 230 of the EC Treaty, of the decision in the letter of 7 February 2007, prot. 3585, of the Director General of the Directorate-General for Agriculture of the Commission, by which the request of the Italian authorities to adopt exceptional measures to support the Italian market in poultrymeat within the meaning of Article 14 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat [1] is rejected, so far as concerns the chicks destroyed in areas affected by avian influenza and subject to veterinary measures restricting circulation in the period from December 1999 to September 2003 inclusive.

In support of its action, the Italian Government pleads:

— infringement of the principle of non-discrimination between Community producers laid down in the second paragraph of Article 34(2) EC, in so far as the defendant granted exceptional market support measures only with regard to the egg-laying sector, refusing similar measures relating to poultrymeat by the contested measure;