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;

— misuse of powers and manifest error of assessment on the part of the Commission;

It is noted in that respect that, for the purpose of attaining the objective pursued by Regulation No 2777/75, the Commission ought to have adopted exceptional measures to support the Italian market in poultrymeat, by far the most affected avicultural sector in Italy. By contrast, despite the repeated request put forward by the applicant, the Commission refused to do so, merely granting support measures in favour of the egg-laying sector, the least affected in Italy by restrictive measures and, essentially, the only one affected in the Netherlands. In so doing, the Commission clearly intended to allocate the majority of the available resources to Netherlands producers, reducing to a minimum the indemnity granted to Italian producers;

— misinterpretation and infringement of Article 14 of Regulation No 2777/75 and manifest error of assessment.

In the applicant's view, contrary to the view of the defendant, Article 14 of the regulation at issue does not apply only when the imbalances on the market are caused by the fact that it is impossible for producers which are in an area under surveillance and protection to have access to the market outside that area. In fact, the Commission could adopt exceptional support measures to restabilise the market affected by restrictions on free circulation which result from the application of measures intended to prevent the spread of animal disease, irrespective of whether those restrictions relate to products entering or those exiting a particular area;

— lastly, also the breach of the principles of sound administration, impartiality, fairness and transparency.

([1]) OJ L 282 of 1.11.1975, p. 77.

Action brought on 30 April 2007 — Colgate-Palmolive v OHIM — CMS Hasche Sigle (VISIBLE WHITE)

(Case T-136/07)

(2007/C 140/64)

Language in which the application was lodged: English

Parties

Applicant: Colgate-Palmolive Co. (New York, United States) (represented by: M. Zintler, H. Harmeling and K.-U. Plath, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: CMS Hasche Sigle (Cologne, Germany)

Form of order sought

— The decision of the Fourth Board of Appeal dated 15 February 2007 shall be annulled;

— the Court shall confirm the decision of the Cancellation Division and declare that the Community trade mark No 802 793 'VISIBLE WHITE' remains registered;

— the applicant receives an award of costs in respect of the request for a declaration of invalidity, a reversal of the award of the costs made in the Board's decision, and an award of costs in respect of this application.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'VISIBLE WHITE' for goods in class 3 — Community trade mark No 802 793

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: CMS Hasche Sigle

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision and declaration of invalidity of the Community trade mark

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 as the Board of Appeal wrongly considered both the element 'VISIBLE' and the element 'WHITE' as descriptive in relation to 'toothpaste' as well as 'mouthwash' and considered the combination as a whole descriptive and devoid of distinctive character.

Action brought on 4 May 2007 — General Technic-Otis v Commission

(Case T-141/07)

(2007/C 140/65)

Language of the case: French

Parties

Applicant: General Technic-Otis Sàrl (Howald, Grand Duchy of Luxembourg) (represented by: M. Nobusch, lawyer)

Defendant: Commission of the European Communities