

The applicant goes on to put forward six heads of complaint in relation to the Commission's substantive findings. According to the applicant, the Commission infringed Article 81 EC, the obligation to state reasons and the principles of sound administration in its findings with regard to, first, the avowed objective of the agreements, second, the alleged incidental allocation of clients in the catering and home-use market sectors, third, the alleged coordination of other commercial conditions, fourth, the alleged agreement and/or adjustment concerning prices and price increases in both the catering and home-use market sectors, including private-label beer, fifth, the alleged duration of the infringement and, sixth, the applicant's ostensibly direct participation in the alleged infringement.

The applicant concludes by putting forward two heads of complaint relating to the quantum of the fine imposed. It submits that, by applying a notional turnover figure which includes excise duty in applying the legally permissible maximum of 10 %, the Commission breached Article 23(2) of Regulation No 1/2003 ⁽¹⁾. The applicant also takes issue with the disproportionate nature of the fine imposed, in which connection it argues that the Commission failed to make allowance for the length of the proceedings and failed to have regard for the contrast with the parallel Belgian beer case ⁽²⁾.

⁽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⁾ Case No IV/37/614.F3 PO/Interbrew and Alken-Maes (OJ 2003 L 200, p. 1).

Action brought on 4 July 2007 — Bavaria v Commission

(Case T-235/07)

(2007/C 211/76)

Language of the case: Dutch

Parties

Applicant: Bavaria NV (represented by: O.W. Brouwer, D. Mes and A.C.E. Stoffer, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— set aside in whole or in part the Commission decision of 18 April 2007 relating to a proceeding under Article 81 EC

(Case COMP/B-2/37.766 — Netherlands beer market — C(2007) 1697 final) to the extent to which that decision concerns Bavaria NV;

- in the alternative, reduce the fine imposed on Bavaria NV;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant is challenging the Commission decision of 18 April 2007 relating to a proceeding under Article 81 EC (Case COMP/B-2/37.766 — Netherlands beer market), by which a fine was imposed on the applicant.

In support of its application, the applicant first submits that there has been an infringement of the principle of sound administration in so far as the Commission failed to institute a full, careful and impartial investigation.

Second, it is claimed that the Commission breached Article 81 EC through manifest errors of appraisal, misapplication of the law in establishing the existence of the breach, disregard for the presumption of innocence, and infringement of the principle of legality and of the obligation under Article 253 EC to state reasons.

Third, the applicant contends that the Commission erred in its determination of the duration of the breach.

Fourth, it is alleged that, in determining the level of the fine imposed on the applicant, the Commission breached Article 23 of Regulation No 1/2003 ⁽¹⁾, the guidelines on fines based on that regulation ⁽²⁾, the principle of equality and the principle of proportionality.

Fifth, the applicant alleges that there was a manifest failure by the Commission to carry out its investigation within a reasonable time-frame inasmuch as that investigation lasted more than seven years.

Sixth, the applicant claims that there has been an infringement of essential procedural requirements, of the principle of sound administration and the rights of the defence, consisting in the refusal to grant it access to the replies of other breweries to the statement of objections and to sections of the Commission's file of crucial importance for the applicant's defence.

⁽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 — 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).