

- infringement of the principle of proportionality in that the fine imposed was excessive, disproportionate and cannot be justified by the objective of deterrence;
- infringement of Article 23 of Regulation No 1/2003 and failure to state reasons in so far as the Commission is not entitled to base its decision on the two cases of previous infringement which were regarded as relevant in the contested decision, on the ground that neither of those two decisions was addressed to the applicants;
- an error of law and of assessment in the application of Article 23(2)(a) and (3) of Regulation No 1/2003 in that the Commission did not take into account, in calculating the fine, that the applicants had not substantially contested the accuracy of the facts.

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- (¹) As amended after the action was brought because of a corrigendum to the contested decision adopted by the Commission.
- (²) 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).
- (³) Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

Action brought on 18 February 2009 — Soliver NV v Commission of the European Communities

(Case T-68/09)

(2009/C 90/50)

Language of the case: Dutch

Parties

Applicant: Soliver NV (Roeselare, Belgium) (represented by H. Gilliams and J. Bocken, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul Article 1 of the Commission Decision of 12 November 2008 in Case COMP/39.125 — Car glass, in so far as it finds that the applicant participated from 19 November 2001 to 11 March 2003 in the infringement established in that decision;
- annul Article 2 of the Commission Decision of 12 November 2008 in Case COMP/39.125 — Car glass, in so far as it imposes a fine of EUR 4 396 000 on the applicant;

- in the alternative, substantially reduce the fine imposed on the applicant;
- in any case, order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of its application the applicant pleads infringement of Article 81 EC and Article 53 EEA and of the obligation to state reasons, and a manifestly incorrect assessment of the facts. The applicant submits that the contested decision incorrectly states that between 19 November 2001 and 11 March 2003 the applicant was a party to the infringement found in Article 1 of the contested decision.

Second, the applicant submits that the value of sales figure taken by the Commission is not supported by reasons, is not in accordance with the Guidelines on the setting of fines, does not allow the applicant to defend itself, is contrary to the presumption of innocence, and infringes the principle of equal treatment.

Third, the applicant pleads infringement of the principles of equal treatment and of proportionality, the Guidelines on the setting of fines and the duty to state reasons. When calculating the basic amount of the applicant's fine, the Commission applied an excessively high percentage of the value of its sales.

Fourth, the applicant pleads infringement of the principles of equal treatment and of proportionality and a manifestly incorrect assessment of the facts, by virtue of the fact that the Commission multiplied the applicant's value of sales by the number of years during which the applicant was alleged to be a party to the infringement found in Article 1 of the contested decision.

Fifth, the applicant alleges infringement of the prohibition of retroactive effect. According to the applicant, the Commission is applying the 2006 Guidelines (¹) to an alleged infringement that took place before the enactment of those guidelines.

Sixth, the applicant pleads infringement of the principles of equal treatment and of proportionality and a manifestly incorrect assessment of the facts by virtue of the fact that the Commission increased the basic amount of the applicant's fine by an additional amount of 16% of the applicant's value of sales.

Seventh, the applicant alleges infringement of Article 81 EC and the Guidelines on the setting of fines because, when calculating the applicant's fine, the Commission refused to take into account various mitigating circumstances for the applicant.

(¹) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (Text with EEA relevance) (OJ 2006 C 210, p. 2).