

Second, the applicants submit that the Commission infringed Article 81 EC and Article 53 EEA and/or Regulation (EC) No 1/2003 by incorrectly assessing the duration of any infringing conduct by the applicants; specifically by concluding that they participated in a single and continuous infringement from 10 March 1998 onwards.

Third, the applicants claim that the Commission infringed Article 81 EC and Article 53 EEA and/or Regulation (EC) No 1/2003 by incorrectly assessing and substantially overstating the extent of the applicants' individual roles in any infringing conduct.

Fourth, it is submitted that the Commission infringed Article 81 EC and Article 53 EEA and/or Article 23(2) of Regulation (EC) No 1/2003 and/or the Fining Guidelines⁽²⁾ by imposing a fine which is manifestly excessive having regard to the overall nature of the conduct described in the decision; in particular by assessing the gravity percentage of relevant sales to be used in calculating the fine, pursuant to paragraphs 19 to 23 of the Fining Guidelines, at 16%.

Fifth, the applicants claim that, as a result of the error described in the second plea summarised above, the Commission also infringed Article 81 EC and Article 53 EEA and/or Article 23(2) of Regulation (EC) No 1/2003 and/or the Fining Guidelines by calculating the basic amount of the fine imposed on the applicants using a multiplier for duration of 4.5 years.

Sixth, the applicants claim that the Commission also infringed Article 81 EC and Article 53 EEA and/or Article 23(2) of Regulation (EC) No 1/2003 and/or the Fining Guidelines by failing to take into account relevant attenuating circumstances in relation to the applicants in setting the fine imposed on them.

Seventh, the applicants claim that the Commission infringed Article 81 EC and Article 53 EEA and/or Article 253 EC and/or Regulation (EC) No 1/2003 and/or the Fining Guidelines by using an inappropriate relevant sales figure to calculate the fine imposed on the applicants.

Eighth, the applicants claim that the Commission infringed Article 81 EC and Article 53 EEA and/or Regulation (EC) No 1/2003 and/or the Fining Guidelines by imposing a fine on the applicants which is, irrespective of any of the claims raised in

any of the other pleas summarised above, manifestly disproportionate having regard to the overall circumstances of the case.

Ninth, the applicants submit that the Commission infringed Article 81 EC and Article 53 EEA and/or Regulation (EC) No 1/2003 and/or the Fining Guidelines in that the fine imposed on the applicants is substantially excessive having regard to the requirement imposed on the Commission under Community law to afford equal treatment to parties when imposing fines under Article 23 of Regulation (EC) No 1/2003.

Tenth, the applicants claim that the Commission infringed Article 81 EC and Article 53 EEA and/or Article 23(2) of Regulation (EC) No 1/2003 and paragraph 32 of the Fining Guidelines by imposing a fine on the applicants which exceeds the limit prescribed by the abovementioned provisions.

Eleventh, the applicants contend that the fine imposed on them is, in all circumstances, manifestly disproportionate; excessive; and inappropriate, and therefore claim that the Court should exercise its unlimited jurisdiction pursuant to Article 229 EC and Article 31 of Regulation (EC) No 1/2003 to review the level of the fine and in doing so substantially reduce it.

⁽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⁾ Guidelines on the method 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 — Compagnie de Saint-Gobain v Commission

(Case T-73/09)

(2009/C 102/39)

Language of the case: French

Parties

Applicant: Compagnie de Saint-Gobain (Courbevoie, France)
(represented by: P. Hubert and E. Durand, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of the European Commission C(2008) 6815 final relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/39.125 — Car glass), together with the grounds on which the operative part of the decision was reached, in so far as the Compagnie de Saint-Gobain was made an addressee of that decision, and draw from that all the necessary consequences as regards the amount of the fine;

— in the alternative, whether or not the Compagnie de Saint-Gobain may be an addressee of the decision, reduce the amount of the fine imposed on the companies belonging to the Saint-Gobain group;

— order the Commission to pay the costs in their entirety.

Pleas in law and main arguments

By the present action, the applicant seeks the partial annulment of Commission Decision C(2008) 6815 final of 12 November 2008 in Case COMP/39.125 — Car glass by which the Commission found that certain undertakings had infringed Article 81(1) EC and Article 53(1) of the Agreement on the European Economic Area by sharing contracts for the supply of car glass and by coordinating their pricing policies and supply strategies on the European market for car glass.

In support of its action, the applicant relies on four pleas in law alleging:

— infringement of Article 23(2) of Regulation No 1/2003 ⁽¹⁾ and of the principle that penalties are personal inasmuch as the Compagnie de Saint-Gobain was made an addressee of the contested decision in its capacity as the parent company of the company Saint-Gobain Glass France SA without having personally and directly participated in the infringement;

— failure to state reasons, infringement of Article 23(2) of Regulation No 1/2003 and of the principle that penalties are personal as the Commission did not establish that the whole of the consolidated turnover of the Saint-Gobain group could be used as a basis for the penalty;

— infringement of the principles of the protection of legitimate expectations and of non-retroactivity in so far as the Commission applied new guidelines dating from 2006 relating to the method of setting fines ⁽²⁾ retroactively to events which took place prior to their entry into force and were fully over before that date;

— infringement of Article 23(2) of Regulation No 1/2003 and of the principle of proportionality as no previous infringements may legitimately be taken into account.

⁽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 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 — France v Commission

(Case T-74/09)

(2009/C 102/40)

Language of the case: French

Parties

Applicant: French Republic (represented by: G. de Bergues and B. Cabouat, acting as Agents)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision 2008/960/EC of 8 December 2008 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) inasmuch as it excludes certain expenditure incurred by the French Republic in favour of fruit and vegetables producer organisations for the financial years 2005 and 2006;