

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;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of 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, for the financial years 2005 and 2006, certain expenditure incurred by the French Republic.

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

- misinterpretation and misapplication of Article 11(2)(d) of Regulation No 2200/96 ⁽¹⁾ in so far as, contrary to what the Commission found, the French Government satisfies the conditions laid down by that provision since every producer has the necessary material and, in accordance with the objective of economic effectiveness pursued by that regulation, it may, in certain circumstances, be more appropriate for each producer to hold the necessary material than to use a single sorting, storage and packaging centre provided by the producer organisation;
- misinterpretation and misapplication of Article 11(1)(c), point 3, of Regulation No 2200/96 in so far as the Commission was wrong to take the view that the French Government had not complied with the conditions of that provision, which provides that the rules of association of producer organisations require producer members to market their entire production through the producer organisation although the French legislation provides for producer organisations to play an active role in the marketing of products and the fixing of selling prices.

⁽¹⁾ Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1).

Action brought on 16 February 2009 — Mundipharma v OHIM — Asociación Farmaceuticos Mundi (FARMA MUNDI FARMACEUTICOS MUNDI)

(Case T-76/09)

(2009/C 102/41)

Language in which the application was lodged: English

Parties

Applicant: Mundipharma GmbH (Limburg (Lahn), Germany) (represented by: F. Nielsen, lawyer)

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

Other party to the proceedings before the Board of Appeal: Asociación Farmaceuticos Mundi (Alfajar (Valencia), Spain)

Form of order sought

- Revoke the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 December 2008 in case R 852/2008-2; and
- Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark “FARMA MUNDI FARMACEUTICOS MUNDI”, for goods and services in classes 5, 35 and 39 — application No 4 841 136

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: Community trade mark registration No 4 304 622 of the trade mark “mundi pharma” for goods and services in classes 5 and 44

Decision of the Opposition Division: Partially rejected the opposition