

## COURT OF FIRST INSTANCE

### Judgment of the Court of First Instance of 30 September 2009 — Lior v Commission and Commission v Lior

(Joined Cases T-192/01 and T-245/04) <sup>(1)</sup>

**(Arbitration clause — Thermie and Altener II programs — Contracts concerning renewable energy and energy saving projects — Admissibility — Claim for payment — Justification of the costs — Claim for reimbursement of advance payments — Compensation)**

(2009/C 282/63)

Language of the case: French

#### Parties

*Applicant in Case T-192/01:* Lior GEIE (Brussels, Belgium) (represented: initially by V. Marien and J. Choucroun, then V. Marien, lawyers)

*Defendant in Case T-192/01:* Commission of the European Communities (represented: initially by H. Støvlbæk, Agent and M. Bra, lawyer, then H. Støvlbæk and M. Konstantinidis, Agents and B. Wägenbaur, lawyer)

*Applicant in Case T-245/04:* Commission of the European Communities

*Defendants in Case T-245/04:* Lior GEIR and Lior International NV (Hoeilaart, Belgium) (represented by: V. Marien)

#### Re:

Two actions under Article 238 EC brought by Lior GEIE and the Commission respectively in pursuance of seven contracts concluded between the Commission and Lior as part of the Thermie programme and a contract concluded between the Commission and Lior as part of the Altener II programme.

#### Operative part of the judgment

The Court:

1. Orders Lior GEIE to pay the Commission:

— EUR 6 156,75 for the Biogas contract, the Biomass contract and the Maxibrochure Bioclimatic contract, together with interest from 28 February 2002 at the interest rate in

euros applied by the European Central Bank to its main refinancing operations in February 2002 increased by 1.5 percentage points until 31 December 2002 and by 3.5 percentage points from 1 January 2003 until full payment;

— EUR 16 325,11 for the Biomass contract, together with interest from 30 June 2002 at the interest rate in euros applied by the European Central Bank to its main refinancing operations from June 2002 increased by 1.5 percentage points until 31 December 2002 and by 3.5 percentage points from 1 January 2003 until full payment;

— EUR 3 980 for the Wind Energy contract, together with interest from 15 January 2002 at the interest rate in euros applied by the European Central Bank to its main refinancing operations in January 2002 increased by 1.5 percentage points until 31 December 2002 and by 3.5 percentage points from 1 January 2003 until full payment;

— EUR 36 000 for the Transport contract, together with interest from 31 August 2001 at the interest rate in euros applied by the European Central Bank to its main refinancing operations in August 2001 increased by 1.5 percentage points until 31 December 2002 and by 3.5 percentage points from 1 January 2003 until full payment;

— EUR 36 000 for the Photovoltaic contract together with interest from 31 August 2001 at the interest rate in euros applied by the European Central Bank to its main refinancing operations in August 2001 increased by 1.5 percentage points until 31 December 2002 and by 3.5 percentage points from 1 January 2003 until full payment.

2. Orders Lior to pay the Commission EUR 32 800 for the Agores contract together with interest from 28 February 2003 at the interest rate in euros applied by the European Central Bank to its main refinancing operations in February 2003 increased by 1.5 percentage points until full payment.

3. Declares that there is no need to give a ruling on the Commission's form of order in Case T-245/04 seeking an order that Lior International NV is jointly and severally liable for the payment of the sums owed by Lior.

4. Orders Lior to pay, in addition to its own costs relating to the main proceedings in Joined Cases T-192/01 and T-245/04, one quarter of the Commission's costs relating to those proceedings.

5. Orders Lior to bear all the costs relating to the application for interim relief in Case T-192/01 R.
6. Orders the Commission to bear three-quarters of its own costs relating to the main proceedings in Case T-192/01 and three-quarters of its own costs relating to the proceedings brought against Lior in Case T-245/04.
7. Orders the Commission to bear its own costs relating to the action against Lior International in Case T-245/04.
8. Orders Lior International to bear its own costs.

(<sup>1</sup>) OJ C 303, of 27.10.2001.

### Judgment of the Court of First Instance of 30 September 2009 — Hoechst v Commission

(Case T-161/05) (<sup>1</sup>)

*(Competition — Agreements, decisions and concerted practices — Market for monochloroacetic acid — Decision finding an infringement of Article 81 EC — Market sharing and price-fixing — Attributability of the infringement — Fines — Proportionality — Cooperation — Aggravating circumstances — Repeated infringement — Access to the file — Report of the Hearing Officer — Order to bring the infringement to an end)*

(2009/C 282/64)

Language of the case: German

#### Parties

*Applicant:* Hoechst GmbH, formerly Hoechst AG (Frankfurt am Main, Germany) (represented initially by M. Klusmann and U. Itzen, and subsequently by M. Klusmann, U. Itzen and S. Thomas, lawyers)

*Defendant:* Commission of the European Communities (represented initially by A. Bouquet, F. Amato and M. Schneider, and subsequently by A. Bouquet and M. Kellerbauer, Agents)

#### Re:

Application, principally, for annulment of Articles 2 and 3 of Commission Decision C(2004) 4876 final of 19 January 2005 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/E-1/37.773 — MCAA) and, in the alternative, application for reduction of the fine imposed on the applicant.

#### Operative part of the judgment

The Court:

1. Sets the amount of the fine imposed on Hoechst AG in Article 2(b) of Commission Decision C(2004) 4876 final of 19 January

2005 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/E-1/37.773 — MCAA) at EUR 66 627 million;

2. Dismisses the remainder of the action;
3. Orders each party to bear its own costs.

(<sup>1</sup>) OJ C 155, 25.6.2005.

### Judgment of the Court of First Instance of 30 September 2009 — Arkema v Commission

(Case T-168/05) (<sup>1</sup>)

*(Competition — Agreements, decisions and concerted practices — Market for Monochloroacetic acid — Decision finding an infringement of Article 81 EC — Market sharing and price fixing — Imputability of the unlawful conduct — Principle that penalties must fit the offence — Obligation to state the reasons on which the decision is based — Fines — Proportionality — Gravity and duration of the infringement — Deterrent effect — Actual impact on the market — Attenuating circumstances — Role of follower — Aggravating circumstances — Repeated infringement)*

(2009/C 282/65)

Language of the case: French

#### Parties

*Applicant:* Arkema SA (Paris, France) (represented by: M. Debroux, lawyer)

*Defendant:* Commission of the European Communities (represented: initially by A. Bouquet and F. Amato, then A. Bouquet and X. Lewis, Agents)

#### Re:

Primarily, annul Article 1(d), Article 2(c) and Article 4(9) of Commission Decision C(2004) 4876 final of 19 January 2005 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case No COMP/E-1/37.773 — MCAA) and, in the alternative, request to amend Article 2 (c) and (d) of that decision.

#### Operative part of the judgment

The Court:

1. Dismisses the action.
2. Orders Arkema SA to pay the costs.

(<sup>1</sup>) OJ C 171, of 9.7.2005.