— accord to the present action appropriate priority, so as to avoid burdening the file with a separate request for expedited treatment and to render judgment within six weeks;

— order such other or further remedies as justice may require;

— order the Commission to pay the costs of the present action.

Pleas in law and main arguments

On 20 February 2009, the applicant made a formal request for the purpose of Article 232 EC that the Commission take a decision recognising the occupational nature of her late husband's lung cancer for the purpose of Article 73 of the Staff Regulations and the Joint Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease.

In the absence of any such decision or any adoption of position within the required time-limit, the applicant requests that the Court find that the Commission, by failing to take a decision within a reasonable time on her husband's occupational disease recognition request, has failed to fulfil its obligations under Article 90 of the Staff Regulations and Article 23 of the Joint Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease and is therefore liable for failure to act within the meaning of Article 232 EC.

Action brought on 6 October 2009 — HSE v Commission

(Case T-399/09)

(2009/C 312/52)

Language of the case: English

Parties

Applicant: Holding Slovenske elektrarne d.o.o. (HSE) (Ljubljana, Slovenia) (represented by: F. Urlesberger, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Article 1 (g) of the contested decision in so far as it holds the applicant responsible of an infringement of Article 81 EC and Article 53 EEA Agreement;

— annul Article 2 (i) of the contested decision;

— *in eventu*, reduce the fine imposed upon the applicant in Article 2 (i) of the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of the present application, the applicant seeks the annulment of Commission decision of 22 July 2009 (Case No COMP/39.396 — Calcium and magnesium reagents for the steel and gas industries) in so far as the Commission found the applicant liable of a single and continuous infringement of Article 81 EC and Article 53 EEA through market sharing, quotas, customer allocation, price fixing and exchanges of sensitive commercial information between suppliers of calcium carbide and magnesium granulates. Alternatively, the applicant seeks the reduction of the fine imposed upon it.

In support of its claims the applicant submits that the Commission infringed Article 81 EC and Regulation 1/2003 by committing the following errors in law:

First, the applicant claims that the Commission may not impute the conduct of TDR Metalurgija d.d. (TDR) to the applicant because HSE and TDR have never formed a single economic entity. In the absence of a rebuttable presumption of liability of the applicant (such presumption would have applied only if HSE had held 100 % in TDR), the Commission has failed to prove that HSE actually exercised decisive control over TDR.

Second, the applicant argues that the Commission erroneously applied to all parties an increase of the basic amount of the fine by 17 % for deterrence purposes. In the applicant's opinion, the Commission should have taken into account that a deterrence factor is not justifiable in relation to HSE since the Commission decided to abstain from fining the direct perpetrator TDR (from whom a deterrence amount may have been appropriate) and the applicant was not directly involved in anticompetitive conduct.

Third, the applicant contends that the Commission disregarded the mitigating circumstances in calculating the amount of the fine as it has not taken into account that the applicant acted, if at all, merely negligently in failing to sufficiently control TDR's business behaviour in order to avoid an infringement of competition law. Furthermore, the applicant claims that the Commission should have taken into account, as a mitigating circumstance, the fact that TDR as a company together with its collusive business habits were "imposed" on the applicant by way of a political decision on the part of the Slovenian government and that neither did the applicant choose to acquire TDR, nor did it choose to influence its business conduct towards participation in a cartel.