The pleas in law and main arguments raised by the applicants are the following:

First, the applicants submit that the Commission committed an infringement of law in adopting a fining decision against the applicants in breach of the rules on limitation contained in Articles 25(5) and 25(6) of Council Regulation (EC) No 1/2003 (hereinafter 'Regulation No 1/2003') on the implementation of the rules on competition laid down in Articles 81 and 82 EC (now 101 and 102 TFEU) [1]. According to Article 25(5) of Regulation No 1/2003, the absolute limitation period beyond which the Commission may not impose sanctions for antitrust violations is 10 years from the date that the infringement ceased. Accordingly, the applicants put forward that the decision taken over 11 years after the end of the applicants' infringement (2 October 1998) was adopted in violation of the said provision. Further, the applicants submit that the Commission's position on the legality of the fine despite the expiry of the ten year period rests on its *erga omnes* interpretation of the suspension of the limitation period provided for in Article 25(6) of Regulation No 1/2003, which, according to the applicants is flawed.

Second, the applicants claim that the Commission infringed the applicants' rights of defence as the excessive duration of the fact-finding phase of the investigation undermined the ability of the applicants to effectively exercise their rights of defence in this procedure.

Third, the applicants contend that the Commission committed manifest errors in calculating the fine imposed on the applicants by wrongfully basing the fines imposed i) in relation to the pre-joint venture period; and ii) for deterrence, on the turnover achieved by the Akcros joint venture rather than on the turnover achieved by the applicants. According to the applicants, the fines should be reduced by 50 %.

Fourth, the applicants submit that the Commission committed manifest errors of law and infringed the principles of legal certainty, personal responsibility and proportionality by failing to specify the amount of the fine (imposed jointly and severally on the applicants) which is to be paid by the applicants.

[1] OJ 2003 L 1, p. 1

Action brought on 28 January 2010 — GEA Group v Commission

(Case T-45/10)

(2010/C 100/78)

Language of the case: German

Parties

Applicant: GEA Group (Bochum, Germany) (represented by: A. Kallmayer, I. du Mont and G. Schiffers, lawyers)

Defendant: European Commission

Form of order sought

— Annul Article 1(2) of the Decision, in so far as it finds that the applicant infringed Article 101(1) TFEU (formerly Article 81(1) EC) and Article 53(1) of the EEA Agreement;

— annul Article 2 of the decision, in so far as it imposes a fine on the applicant;

— in the alternative, shorten the duration of the infringement allegedly committed by the applicant pursuant to Article 1(2) and reduce the fine imposed on the applicant in Article 2 of the decision;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant has brought an action against Commission Decision C(2009) 8682 of 11 November 2009 in Case COMP/C38.589 — Heat stabilisers. In the contested decision, the Commission imposed fines on the applicant and other undertakings in respect of infringements of Article 81 EC and — since 1 January 1994 — of Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a series of agreements and/or concerted practices in the market for ESBO/esters in the European Economic Area which consisted in the fixing of prices, the sharing of markets through the allocation of supply quotas, the sharing and allocation of customers as well as the exchange of sensitive commercial information, especially concerning customers, production volumes and quantities supplied. The applicant is jointly and severally liable together with two other undertakings that are legal successors of those undertakings that are alleged to have participated in anti-competitive arrangements.

In support of its action, the applicant has submitted three pleas in law.

By way of the first plea in law, the applicant submits that the Commission wrongly assumed that the legal predecessor of the applicant had decisive influence over the relevant undertakings. The applicant submits in this respect that the contested decision is based on wrong findings of fact and a wrong application of the legal provisions regarding imputation, especially the conditions for the assumption that there was decisive influence.

By way of a second plea in law, the applicant submits that the Commission's right to impose a fine on the applicants pursuant to Article 25(1) and (5) of Regulation (EC) No 1/2003 [1] had become time-barred. In this respect, the applicant explains that the Commission has not shown that the relevant undertakings committed an infringement after 1996/1997 and in 1999 and 2000, respectively. Further, the applicant submits that the fact that the Commission suspended the procedure because of the proceedings in Joined Cases T-125/03 and T-253/03 *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* did not lead to a suspension of the period of limitations in respect of the applicant.

Finally, in the third plea, the applicant criticises an infringement of its rights of defence. In this respect, the applicant claims that the Commission suspended the investigation for no reason for more than four years, with the result that the investigation had been running for approximately five years before the applicant was informed and approximately six years before a statement of objections was notified to the applicant. In addition, the Commission failed to investigate the persons involved in the offence and the business unit concerned in order to make a comprehensive finding of the facts of the case. According to the applicant the Commission's failure deprived it of the opportunity to secure exculpatory evidence and to properly defend its case.

[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)

Action brought on 28 January 2010 — Faci v Commission

(Case T-46/10)

(2010/C 100/79)

Language of the case: English

Parties

Applicant: Faci SpA (Milano, Italy) (represented by: S. Piccardo, S. Crosby and S. Santoro, lawyers)

Defendant: European Commission

Form of order sought

— to annul the contested decision in so far as it finds that the Applicant colluded to fix prices, allocate markets through sales quotas and allocate customers;

— to annul, or to substantially reduce the fine imposed on the Applicant;

— to annul the decision in so far as it grants a reduction of the fine originally calculated for Bärlocher or to substantiallv reduce the reduction granted;

— to order the Commission to pay the Applicant's costs.

Pleas in law and main arguments

The Applicant seeks the annulment of the Commission Decision of 11 November 2009 (Case No. COMP/38.589 — Heat Stabilisers) in so far as the Commission found the Applicant liable for an infringement of Article 8l EC (now Article 101 TFEU) and Article 53 EEA by colluding to fix prices, allocating markets through sales quotas and allocating customers in the ESBO/esters sector. Alternatively, the Applicant seeks a substantial reduction of the fine imposed upon it.

In support of its application the Applicant claims that the Commission violated general principles of law, committed manifest errors of assessment, infringed the principles of good administration and equal treatment, acted without competence or infringed the principle of undistorted competition, infringed the obligation to state reasons and misapplied the 2006 Fining Guidelines. The applicant puts forward five pleas in law:

— The Commission made a manifest error of assessment by attaching too little weight to the evidence prior to the Applicant's participation in the cartel, whilst attaching too much weight to the other evidence. As a result, the significance of the fact that a fully operative hard core cartel involving price fixing, market allocation, customer allocation, injurious pricing and even collusive bribery, had been terminated before the Applicant's participation began, was not properly assessed when calculating the gravity of the offence committed by the Applicant.