— The Commission infringed the principle of equal treatment by treating the Applicant similarly to other undertakings, whereas the comparable gravity of its offence warranted substantially different treatment. The Commission imposed a differential of a mere 1 % of the value of sales in the market to be taken into account when setting the fine, despite the fact that the Applicant committed fewer offences and that none of them were hard core in nature and despite a finding of non-implementation by the Applicant. Furthermore, the Commission infringed the prohibition on discrimination by failing to inform the applicant that it was subject to investigation until much later than the other undertakings, thereby causing it prejudice.

— The Commission infringed the principle of good administration with regard to the unreasonable duration of the administrative proceedings and its suspension of the proceedings to deal with an interlocutory matter. The principle of equal treatment was infringed as the Commission's actions were unfairly prejudicial to the Applicant who, as a result, should have received a reduction in fine substantially greater than the 1 % received.

— The Applicant challenges the reduction in fine (in excess of 95 %) granted to Bärlocher, which is an actual or potential competitor of the Applicant, on the grounds of lack of competence, infringement of the principle of equal treatment in the broad sense and of the duty to state reasons. In the Applicant's view, the reduction in fine amounts to a subsidy, likely to lead to a distortion of competition. In addition, or in the alternative, the reasons for the reduction were not disclosed by the Commission in the version of the Decision notified to the Applicant, amounting to a breach of the duty to state reasons.

— The fine imposed on it infringed the 2006 Fining Guidelines and attendant principles. When setting the fine, the Commission did not take proper account of the fact that the Applicant had not engaged in hard core cartel offences, unlike the other undertakings, and that it had demonstrated competitive behaviour on the relevant market throughout. The gravity of the Applicant's infringement was mistakenly assessed by incorrectly imputing anticompetitive behaviour to it. In addition, the Commission failed to assess the actual role Faci played, failed to take account of the Applicant's limited size, limited market power and inability to damage competition in comparison to the other undertakings and failed to rectify this by reference to point 37 of the 2006 Fining Guidelines, so as to apply them lawfully.

Action brought on 27 January 2010 — Akzo Nobel e.a. v Commission

(Case T-47/10)

(2010/C 100/80)

Language of the case: English

Parties

Applicants: Akzo Nobel NV (Amsterdam, Netherlands), Akzo Nobel Chemicals GmbH (Düren, Germany), Akzo Nobel Chemicals B.V. (Amersfoort, Netherlands), Akcros Chemicals Ltd (Stratford-upon-Avon, United Kingdom) (represented by: C. Swaak, and Marc van der Woude, lawyers)

Defendant: European Commission

Form of order sought

— to annul Articles 1 (1) and (2) of the contested decision in whole or in part, and/or

— reduce the fines imposed by Articles 2 (1) and (2) of the contested decision, and/or

— declare that Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. cannot be held liable for the infringements before 1993, that Akzo Nobel N.V. cannot be held liable for the infringement for the period between 1987 to 1998, neither individually nor jointly with undertakings belonging to the Elementis group;

— condemn the Commission to costs of the proceedings.

Pleas in law and main arguments

The applicants seek 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 applicants 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, allocating customers and exchanging commercially sensitive information in particular on customers, production and sales in the tin stabilisers sector. Alternatively, the applicants seek a substantial reduction of the fine imposed upon it.

The applicants submit that in attributing liability to them, the Commission has made several errors in law and in fact and they put forward three pleas in law in support of their claims.

In the first plea, the applicants argue that the Commission violated the principles of administrative diligence, reasonable delay and the rights of defence in conducting their investigation into the alleged tin stabilisers and ESBO/esters infringements. The delay in the Commission's investigation does not constitute a suspension under Article 25(6) of Regulation 1/2003 [1]. Furthermore, the applicants claim that the Commission violated their rights of defence by not granting access to all exculpatory and incriminatory documents in their file.

In the second plea, the applicants submit that the Commission failed to establish the existence of the infringements and the applicants' liability for their entire alleged duration. In subsidiary order, the applicants argue that the Commission failed to prove the existence of the infringement during part of the alleged period which should have a downward effect on the calculation of the fine. The Commission breached the ten year prescription rule provided for in Article 25 of Regulation 1/2003 and is time barred from imposing any fine on the applicants.

The applicants' third plea is subsidiary in nature and only relevant if the Court considers that the Commission is not time barred to act against the applicants and/or that the violations set out in the first plea should not lead to the annulment of the entire Decision. First, the Commission wrongfully attributed liability to Pure Chemicals Ltd and Akzo Nobel N.V. for the conduct of the Akcros J.V. as the latter is solely liable for its anti-competitive conduct. Second, the Commission is time barred to act against Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. for the period preceding the J.V. The applicants submit that the Commission should have allocated the liability separately to the applicants and (companies of) the Elementis group for the JV period. Furthermore, the Commission wrongly double counted the JV's turnover in the Commission's calculation of the fines.

[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

Appeal brought on 2 February 2010 by Herbert Meister against the judgment of the Civil Service Tribunal delivered on 30 November 2009 in Case F-17/09, Meister v OHIM

(Case T-48/10 P)

(2010/C 100/81)

Language of the case: German

Parties

Appellant: Herbert Meister (Muchamiel, Spain) (represented by H.-J. Zimmermann, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought by the appellant

— Annul the judgment of the Civil Service Tribunal of 30 November 2009 in Case F-17/09 *Meister* v *OHIM*;

— order the defendant to pay the costs.

Pleas in law and main arguments

The appeal is against the judgment of the Civil Service Tribunal of 30 November 2009 in Case F-17/09 *Meister* v *OHIM* by which the appellant's action was dismissed as manifestly inadmissible.

In support of his appeal, the appellant claims that the action at first instance was necessary on the ground that the facts are directly materially connected with the subject-matter of the previous Joined Cases F-138/06 and F-37/08, which at the time the action was brought had not been decided. The appellant claims that the dismissal from the outset of Case F-17/09 as inadmissible without an oral hearing infringes the guarantee of the right to be heard in Article 6 ECHR. Furthermore, the appellant complains that the Civil Service Tribunal dismissed its request for a stay of proceedings in view of an appeal brought against the judgment in Case F-37/08. Finally, it complains that the court of first instance's assessment of the subject-matter was incomplete an incorrect in law.