

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (Case COMP/39.092) insofar as it holds them liable for participation in a continuing agreement or concerted practice in bathroom fittings and fixtures sector covering the territory of Germany, Austria, Italy, France, Belgium and the Netherlands.

In support of the action, the applicants rely on seven pleas in law.

First, they submit that the Commission failed to assess or investigate the economic context and thereby failed to establish the anti-competitive object of the alleged infringements to the requisite legal standard. The applicants contend that the Commission was not legally entitled to presume (or equally to find) that discussions (i) between non-competitors and (ii) about a non-economic price which no market actor pays had anti-competitive object.

Second, they claim that the Commission would have been wrong to hold the applicants responsible for an infringement to taps given the first plea and the fact that the applicants do not produce taps.

Third, the applicants argue that the Commission failed to establish the existence of the alleged infringement to the requisite legal standard, notably because its analysis of the evidence was erroneous in France, Italy and in relation to Keramag Keramische Werke Aktiengesellschaft in Germany.

Fourth, they submit that the Commission has not established an interest in finding an infringement in the Netherlands that was time-barred.

Fifth, the applicants contend that the Commission failed

(i) to adequately set out the allegations in the Statement of Objections and

(ii) to retain and disclose relevant and potentially exculpatory evidence.

These procedural failings harmed, in the applicants' view, their rights of defence.

Sixth, the applicants claim that the investigation in this case was selective and arbitrary in nature given that many companies that are alleged to have participated in the supposedly illegal meetings or discussions were never prosecuted.

Seventh, they submit that the fine was unjustifiably and disproportionately high, in particular due to the absence of implementation or effects on the market. Therefore, the applicants invite the Court to exercise its unlimited jurisdiction under Article 261 TFEU to reduce the fine.

Action brought on 8 September 2010 — Sanitec Europe v Commission

(Case T-381/10)

(2010/C 301/67)

Language of the case: English

Parties

Applicants: Sanitec Europe Oy (Helsinki, Finland), (represented by: J. Killick, Barrister, I. Reynolds, Solicitor, P. Lindfelt and K. Struckmann, lawyers)

Defendant: European Commission

Form of order sought

— Annul in whole or in part the Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures;

— Declare that the applicant bears no responsibility for anti-competitive activity in taps and, if necessary, annul the contested decision to the extent it may find the applicant (or its affiliates) so responsible;

— Further or in the alternative, reduce the level of the fine;

— Order the Commission to pay the costs; and

— Make any other order as may be appropriate in the circumstances of the case.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures, relating to an agreement between undertakings covering the Belgian, German, French, Italian, Dutch and Austrian markets of bathroom fittings and fixtures, concerning the sale prices and the exchange of sensitive commercial information, as well as, in the alternative, the reduction of the amount of the fine imposed on it.

In support of its application, the applicant puts forward the following pleas in law:

Firstly, the Commission failed to assess or investigate the economic context and thereby failed to establish the anti-competitive object of the alleged infringements to the requisite legal standard. It was not legally entitled to presume (or equally to find) that discussions (i) between non-competitors and (ii) about a non-economic price which no market actor pays had anti-competitive object.

Secondly, the Commission would have been wrong to hold the applicant responsible for an infringement on taps given the first plea and the fact that neither the applicant nor its affiliates produce taps.

In addition, the Commission failed to establish the existence of the alleged infringement to the requisite legal standard, notably because its analysis of the evidence was erroneous in France, Italy and in relation to Keramag Keramische Werke AG in Germany, for which the applicant was held liable.

Fourthly, the Commission has not established an interest in finding an infringement in the Netherlands that was time-barred.

Furthermore, the Commission failed (i) to adequately set out the allegations in the Statement of Objections and (ii) to retain and disclose relevant and potentially exculpatory evidence. These procedural failings irretrievably harmed the applicant's rights of defence.

As an additional plea in law, the applicant could not be held directly and individually liable for a fine of EUR 9 873 060. The Applicant was not itself found guilty of any illegal conduct. It was only liable as a parent company and as such cannot be directly and individually liable for a fine. Moreover, the possibility of direct and individual liability was not set forth in the Statement of Objections, which is a procedural irregularity that warrants annulment.

Moreover, the applicant was wrongly held jointly liable for the actions of its affiliate Keramag Keramische Werke AG. The applicant did not own all the shares of Keramag Keramische Werke AG during the relevant period and was not in a position to, and did not, exercise decisive influence over it.

At the same time, the investigation in this case was selective and arbitrary in nature given that many companies that are alleged to have participated in the supposedly illegal meetings or discussions were never prosecuted.

Finally, the fine was unjustifiably and disproportionately high, in particular due to the absence of implementation or effects on the market. The Applicant invites the Court to exercise its unlimited jurisdiction under Article 261 TFEU to reduce the fine.

Action brought on 9 September 2010 — Villeroy & Boch v Commission

(Case T-382/10)

(2010/C 301/68)

Language of the case: French

Parties

Applicant: Villeroy & Boch (Paris, France) (represented by: J. Philippe and K. Blau-Hansen, lawyers, and A. Villette, Solicitor)

Defendant: European Commission

Form of order sought

- declare the contested decision null and void in so far as it concerns the applicant;
- in the alternative, in consequence, reduce the fine imposed on the applicant by the contested decision;
- order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

The applicant seeks partial annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area ('EEA') (Case COMP/39092 — Bathroom fixtures and fittings) concerning a cartel on the Belgian, German, French, Italian, Netherlands and Austrian markets in bathroom fixtures and fittings for the coordination of sales prices and the exchange of sensitive business information.

The applicant puts forward seven pleas in law in support of its action:

- breach of Article 101 TFEU and Article 53 EEA as a result of classifying the infringement as a single, complex and continuous infringement, since the defendant thus failed to comply with its duty in law to assess the individual conduct of each of the undertakings to which the decision is addressed;
- breach of the duty to state reasons pursuant to the second paragraph of Article 296 TFEU, since the defendant failed to provide a sufficiently precise definition of the relevant markets in the contested decision;
- lack of sufficient evidence concerning the applicant's participation in infringements in France;
- breach of the principle *nulla poena sine lege* laid down in the first paragraph of Article 49 of the Charter of Fundamental Rights of the European Union ('the Charter'), and the principle of the proportionality of the penalty to the offence, laid down in Article 49(3) of the Charter in conjunction with Article 48(1) of the Charter and Article 23 of Regulation No 1/2003,⁽¹⁾ since the defendant imposed a fine jointly and severally on the applicant and its parent company;
- mis-calculation of the fine, since the defendant included some of the applicant's turnover which had no connection with the objections raised when the fine was calculated;