

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,<sup>(1)</sup> 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;

- breach of Article 41 of the Charter, since the excessive length of the procedure was not taken into account when the fine was calculated;
- breach of the principle of the proportionality of penalties and errors of assessment when the fine was calculated, since the basic amount was set at 15 % and the absolute amount of the fine exceeded the limit of 10 % of the applicant's turnover.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

**Action brought on 7 September 2010 — Continental Bulldog Club Deutschland v OHIM**

(Case T-383/10)

(2010/C 301/69)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Continental Bulldog Club Deutschland eV (Berlin, Germany) (represented by S. Vollmer, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 June 2010 in Case R 300/2010-1;
- In the alternative, annul the contested decision, in so far as it concerns goods and services in Class 44;
- Order the defendant to pay the costs of the proceedings, including those of the proceedings before the Board of Appeal.

**Pleas in law and main arguments**

*Community trade mark concerned:* Word mark 'CONTINENTAL' for goods in Classes 31 and 44.

*Decision of the Examiner:* Registration was refused.

*Decision of the Board of Appeal:* The appeal was dismissed.

*Pleas in law:* Breach of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009, <sup>(1)</sup> since the Community trade mark in question is distinctive and is not descriptive.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 13 September 2010 — ArcelorMittal Wire France and Others v Commission**

(Case T-385/10)

(2010/C 301/70)

*Language of the case: French*

**Parties**

*Applicants:* ArcelorMittal Wire France (Bourg-en-Bresse, France), ArcelorMittal Fontaine (Fontaine-L'Évêque, Belgium), ArcelorMittal Verderio Srl (Verderio Inferiore, Italy) (represented by: H. Calvet, O. Billard and M. Pittie, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Principally, annul the Commission decision in Case COMP/38.344 — Pre-stressing steel in so far as (i) in Article 1 thereof, it finds that AMWF, AM Fontaine and AM Verderio took part in a single and continuous infringement and/or a concerted practice in the pre-stressing steel sector contrary to Article 101 TFEU and Article 53 of the EEA Agreement from 1 January 1984 to 19 September 2002, 20 December 1984 to 19 September 2002 respectively; (ii) it, consequently, imposes on them, in Article 2 thereof, fines amounting to EUR 276,48 million as regards AMWF, of which EUR 268,8 million is imposed jointly and severally with AM Fontaine and EUR 72 million is imposed jointly and severally with AM Verderio; (iii) it orders them, in Article 3 thereof, to immediately bring the infringement to an end, if they have not already done so and to refrain from repeating any act or conduct of the kind described in (i) and any act or conduct having the same or similar object or effect and (iv) in Article 4 thereof, it addresses the decision to them.

- In the alternative, in the exercise of its unlimited jurisdiction, vary the decision by reducing very substantially the amounts of the fines imposed on each of the applicants, as those amounts appear in Article 2, and

- In any event, order the Commission to pay all the costs.