Appeal brought on 31 October 2024 by Conserve Italia – Consorzio Italiano fra cooperative agricole Soc. coop. agr. and Conserves France SA against the judgment of the General Court (First Chamber) delivered on 4 September 2024 in Case T-59/22, Conserve Italia and Conserves France v Commission

(Case C-762/24 P)

(C/2025/154)

Language of the case: Italian

Parties

Appellants: Conserve Italia – Consorzio Italiano fra cooperative agricole Soc. coop. agr., Conserves France SA (represented by: M. Petite, avocat, L. Di Via, M. Bazzini, A. Oliva, E. Belli, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— declare the appeal admissible;

— set aside the judgment under appeal;

— consequently, reduce the amount of the fine and grant any other measures that the Court may deem appropriate;

— order the Commission to pay the appellants' costs.

Grounds of appeal and main arguments

First ground of appeal: failure to give adequate reasons, and illogical nature of reasons given, relating to the failure to recognise the specific features of the functioning of Conserve Italia and to the criterion applied to determine the legal upper limit of the fine – infringement and incorrect application of Article 23(2) of Regulation No 1/2003. [1]

The appellants complain, in the first place, that the judgment under appeal fails to give adequate reasons; that judgment, having failed to take into consideration the specific features of Conserve Italia and, more specifically, the principle of vertical mutuality as applied to a multi-product cooperative, not only failed to recognise the appropriateness of a functional application of the third paragraph of Article 23(2) of Regulation No 1/2003 but also failed to give adequate reasons why the appellants' arguments were rejected.

The General Court merely asserted, tautologically, that once Conserve Italia was found to be an undertaking, there was no reason to move away from a formalistic reading of the provisions to calculate the legal upper limit of the fine, that is to say, to take as a reference point the turnover relating to the products that were subject to the infringement (pursuant to the third paragraph of Article 23(2)) and not Conserve Italia's total turnover (pursuant to the second paragraph of Article 23(2)).

So doing, the judgment found that all the appellants' arguments should be rejected at the outset as simply ineffective. Conversely, the appellants argue that the specific features of a specific structure such as that of Conserve Italia distinguish its functioning clearly from that of other types of economic organisation, as is, moreover, recognised by the case-law of the Court of Justice.

[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).

In addition, the appellants complain that the judgment under appeal is vitiated by an error of law – specifically, an infringement of the third paragraph of Article 23(2) of Regulation No 1/2003 – in so far as, without analysing or understanding the functioning of Conserve Italia, the General Court was incorrect to find that the conditions for applying that provision were not fulfilled, which are, however, fulfilled cumulatively. The conduct challenged concerns the activity of some of the agricultural undertakings associated with Conserve Italia, which are active through Conserve Italia on the market concerned by the infringement (that is, the market for canned vegetables).

Therefore, for the purposes of quantifying a fine which is proportional to the seriousness of the infringement and to the economic power of the operators involved, the appellants insist that only the turnover of Conserve Italia relating to the agricultural products concerned by the conduct must be taken into consideration, in accordance with a functional application of the third paragraph of Article 23(2) of Regulation No 1/2003.

Second ground of appeal: infringement and incorrect application of Article 23(2) of Regulation No 1/2003, read in conjunction with Article 49 of the Charter of Fundamental Rights of the European Union regarding the determination of the fine.

By the second ground of appeal, the applicants challenge the fact that the judgment excluded the application of the third paragraph of Article 23(2) of Regulation No 1/2003 on the ground that that provision requires taking into account the turnover of the undertakings that are members of the association only exceptionally, where it is necessary to preserve the dissuasive function of any fine imposed.

So doing, the General Court erred in law by an infringement and incorrect application of Article 23(2) of Regulation No 1/2003, read in conjunction with Article 49 of the Charter of Fundamental Rights of the European Union regarding the determination of the fine.

The purpose of the third paragraph of Article 23(2) of Regulation No 1/2003 cannot (and must not) be confused with the interest in imposing punitive fines, as that provision is rather intended to ensure full effectiveness of the penalty mechanism while guaranteeing the proportionality and necessary deterrent effect of fines, in line with the rule enshrined in Article 49 of the Charter of Fundamental Rights of the European Union, which, it is now common ground, is applicable also to antitrust penalties.

Therefore, the appellants submit that, had the General Court satisfactorily considered the cooperative structure of Conserve Italia and the principle of vertical mutuality which governs its functioning, it would have correctly found that the functional application of the third paragraph of Article 23(2) of Regulation No 1/2003 relied on is appropriate for determining a fair and proportionate fine to be imposed on the appellants.