

Case T-153/04

Ferriere Nord SpA

v

Commission of the European Communities

(Competition — Fine — Breach of Article 81 EC — Powers of the Commission in respect of the enforcement of sanctions — Limitation period — Articles 4 and 6 of Regulation (EEC) No 2988/74 — Admissibility)

Judgment of the Court of First Instance (First Chamber), 27 September 2006 II - 3892

Summary of the Judgment

1. *Actions for annulment — Substantive scope*
(Arts 230 EC, 238 EC and 249 EC)

2. *Competition — Fines — Time-limit laid down in Regulation No 2988/74 (Council Regulation No 2988/74, Art. 4)*
3. *Actions for annulment — Actionable measures — Decision — Concept (Arts 230 EC and 249 EC)*

1. A demand for payment of the outstanding balance of a fine for infringement of the competition rules imposed by a Commission decision within the meaning of Article 249 EC and the notice regarding enforcement of the bank guarantee constitute a form of enforcement of that decision and must be regarded as an act administrative in nature.

It follows that an action for annulment brought pursuant to Article 230 EC constitutes the appropriate action for review of the legality of the contested acts.

(see paras 39-42)

Although there is a contractual relationship, consisting of a bank guarantee, between a bank and the Commission, which is based on the fined company's obligation to the Commission and that bank guarantee contains an arbitration clause within the meaning of Article 238 EC, a challenge to that demand does not constitute a dispute of a contractual nature based on the bank guarantee which would mean that Regulation No 2988/74 concerning limitation periods in proceedings and the enforcement of sanctions under the rules relating to competition did not apply.

2. Regulation No 2988/74 concerning limitation periods in proceedings and the enforcement of sanctions under the rules relating to competition established a complete system of rules covering in detail the periods within which the Commission is entitled, without undermining the fundamental requirement of legal certainty, to enforce decisions imposing fines on undertakings which are the subject of proceedings under the Community competition rules.

It follows that the mere existence of a contractual relationship between a bank and the Commission, that is to say a bank guarantee to pay a fine imposed for infringement of the competition rules,

cannot prevent the possibility of the Commission's power to enforce the decision imposing the fine on expiry of the time-limit laid down in Article 4 of that regulation being time-barred.

In that regard, it makes no difference whether the bank guarantee may be classified as accessory as regards the main relationship which it guarantees or, conversely, as independent by reason of the clause regarding payment on first demand which it contains.

(see paras 45, 46)

3. A decision within the meaning of Article 249 EC is any act clearly and definitively altering its addressee's legal position.

Such is the case of a demand for payment of the outstanding balance of a fine imposed for infringement of the competition rules, accompanied by a threat to take steps to enforce the bank guarantee, where the Commission's power to enforce the decision imposing that fine is time-barred.

(see paras 54-57)