

- an order for a reduction in the amount of the fine imposed on the applicant under the Decision;
- an order that the Commission reimburse the applicant for the unduly paid portion of the fine, with interests starting from the date of payment of the fine until full and final reimbursement by the Commission; and
- an order that the Commission pay for the costs of the proceedings.

### Pleas in law and main arguments

The applicant seeks the partial annulment of the Commission Decision C(2005) 4634 final of 30 November 2005 in Case COMP/F/38.354 — Industrial bags. The applicant does not contest the substantive truth of the facts established, but submits that the Decision contains various errors of assessment of the facts concerning the applicant's subsidiary Rosenlew Saint Frères Emballage and its role in the cartel activities, and seeks a reduction of the amount of the fine imposed on the ground that it is unjustified and disproportionate.

In support of its application, the applicant alleges errors of fact in the application of Article 81(1) CE. The applicant submits that the Decision is vitiated due to the absence of evidence of a single and continuous infringement committed by Rosenlew Saint Frères Emballage. Second, the applicant submits that the Commission wrongly assessed the duration of the infringement. According to the applicant, the Commission failed to establish that Rosenlew Saint Frères Emballage took part in cartel activities in the block bags sector and participated in the Valveplast meetings at the European level as of 20 December 2004. In addition, the applicants states that there is insufficient proof of Rosenlew Saint Frères Emballage's involvement in the meetings of the French group on open mouth bags until 31 January 1999.

The applicant furthermore submits an infringement of the general principles of proportionality, equal treatment and fairness, and errors in assessment in setting the fine.

First, the applicant claims that the Commission exceeded the limits of its discretion under Article 23(3) of Regulation 1/2003 by setting a starting amount for its fine that is disproportionate to the gravity of the infringement committed. In this regard, the applicant challenges the application of a deterrent factor of 2 and contends that the market share held in 1996 in the industrial bags market covered by the overall cartel was not the appropriate basis for calculating the basic amount of the fine.

Second, the applicant submits that the Commission erroneously assessed the duration of Rosenlew Saint Frères Emballage participation in the cartel activities.

Third, the applicant contends that the Commission failed to give proper consideration to the fact that the applicant was held liable only in its capacity as parent company and, in so doing, breached the principle of fairness.

Fourth, the applicant submits that the Commission failed to consider certain mitigating circumstances and wrongly attributed the aggravating circumstances of recidivism.

Finally, in relation to the setting of the final amount of the fine, the applicant objects to the Commission's characterisation of the cartel as a very serious infringement of the competition rules, given the cartel's limited effect on competition and geographical scope.

The applicant also submits a breach of the rights of defence in that, during the administrative phase, it was not granted access to certain relevant pieces of evidence that were relied upon by the Commission to establish the duration and the scope of the infringement committed by Rosenlew Saint Frères Emballage

### Action brought on 23 February 2006 — Low & Bonar and Bonar Technical Fabrics v Commission

(Case T-59/06)

(2006/C 86/81)

*Language of the case: English*

### Parties

*Applicants:* Low & Bonar plc (Dundee, United Kingdom) and Bonar Technical Fabrics NV (Zele, Belgium) [represented by: L. Garzaniti, lawyer, M. O'Regan, Solicitor]

*Defendant:* Commission of the European Communities

### Form of order sought

- Annul the Contested Decision of the Commission, no. C(2005)4634, of 30 November 2005, in case COMP/F/38.354 — Industrial bags in its entirety, insofar as it relates to the applicants; or

- in the alternative, annul in part Article 1(1) insofar as it relates to the applicants and annul in part, or alternatively, reduce as appropriate the fine imposed by Article 2 on the applicants; and
- in the further alternative, reduce substantially the amount of the fine imposed by Article 2 upon the applicants; and
- order the defendant to pay the costs of the proceedings, including default interest incurred by the applicants or either of them associated with the payment in whole or part of the fine; and
- take any other measures that the Court considers to be appropriate.

### Pleas in law and main arguments

By the Contested Decision the Commission found that Bonar Phormium Packaging ('BPP') had participated in a complex cartel between manufacturers of plastic industrial bags, affecting Belgium, France, Germany, Luxembourg, the Netherlands and Spain. It also found that this cartel had been organised at the European level around a trade association known as Valveplast, along with various sub-groups. It found the first applicant liable for BPP's participation on the grounds that it was the parent company of Bonar Phormium NV ('BP'), of which BPP was a division, and the second applicant liable on the grounds that it was the legal successor to BP, with which it had effected a legal merger. The Commission imposed a fine of 12.24 million EUR on the applicants.

The first applicant contends that the Commission committed errors of law and assessment in finding it liable for the infringement committed by BPP. It alleges that, contrary to the findings of the Contested Decision, it did not participate in the commercial policy of BPP, whose management determined autonomously its conduct on the market.

Both applicants further and alternatively contend that the Commission committed errors of law and assessment in finding that the complex arrangement identified in the Contested Decision amounted to a single and continuous infringement of Article 81 EC committed, at the European level, around Valveplast, alternatively in finding that BPP had participated in or was otherwise aware of and thereby responsible for such an infringement. According to the applicants, the Commission was only entitled to find that BPP had participated in, or alternatively was aware of and responsible for, arrangements covering Belgium and the Netherlands and, of having participated in the Valveplast cartel for one week only, i.e. between 21 November 1997, when a representative of BPP attended a Valveplast meeting, and 28 November 1997 when, according to the Contested Decision, BPP's participation came to an end.

The applicants further and alternatively submit that the fine imposed by the Commission was excessive and disproportionate and infringed the principles of equal treatment and non-discrimination and that the Commission committed other errors of law and assessment in determining the level of the fine and furthermore failed to provide reasons to justify its calculation of the fine. In this context the applicants allege that the Commission failed to appreciate that BPP had played an exclusively passive and limited role and that, further, the Commission imposed a disproportionately and excessively high basic amount.

### Action brought on 13 February 2006 — Italian Republic v Commission

(Case T-61/06)

(2006/C 86/82)

*Language of the case: Italian*

### Parties

*Applicant(s):* Italian Republic (represented by: Paolo Gentili, Avvocato dello Stato)

*Defendant(s):* Commission of the European Communities

### Form of order sought

The applicant(s) claim(s) that the Court should:

- Annul Memorandum No 12980 of 1.12.2005 concerning the certification and declaration of interim costs and request for payment. SPD Veneto ob.2 2000-2006 (No CCI 2000 IT 16 2 DO 005);
- Annul Memorandum No 13683 of 13.12.2005 concerning payments by the European Commission which differ from the amount requested. Ref SPD Programme Lombardy 2000-2006 (No CCI 2000 IT 16 2 DO 014);
- Annul Memorandum No 13684 of 13.12.2005 concerning payments by the European Commission which differ from the amount requested. Ref PEP Programme Puglia (No CCI 1999IT 16 1 PO 009);