Action brought on 16 February 2006 — Italian Republic v Commission

(Case T-60/06)

(2006/C 96/41)

Language of the case: Italian

Parties

Applicant): Italian Republic (represented by: Giacomo Aiello, Avvocato dello Stato)

Defendant): Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C (2005) 4436 final of 7 December 2005 and order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant brings the present action against Commission Decision C (2005) 4436 final of 7 December 2005 concerning the exemption from the tax on mineral oils used as fuel for the production of alumina in the region of Gardanne, the region of Shannon and in Sardinia, implemented by France, Ireland and Italy respectively.

With regard to the applicant, that decision stated that:

— The exemptions in question were not intended to apply generally and without distinction to all those to whom it was addressed, but were designed to support certain undertakings on account of the special structure of the alumina market.

— The aid in question was new and unlawful since notification of it was not given in due time and it was to be regarded as partially existing until 29 May 1998.

— Up to 31 October 2003 that aid was incompatible with State aid rules on the protection of the environment.

In support of its claims, the applicant submits that:

— The tax exemption provided for by Italian legislation was not selective but was directed at all businesses using mineral oil for the production of aluminium oxide. The fact that there is only one plant in Italy at which such oil is used in the production cycle is simply a matter of fact which is not capable of altering the fact, which is not disputed, that the provision is of general scope.

— The aid in question should have been regarded as existing aid in accordance with the provisions of Article 1(b)(ii) of Regulation (EC) No 659/1999 since the Italian State was duly authorised by the Council to keep the exemption that is the subject of the dispute in force.

— The exemption in question was closely linked with the attainment of environmental protection objectives, as may be inferred from the legislation implemented by the Italian Government and from the agreements concluded by Eurallumina with the region of Sardinia and the Ministero dell'Ambiente (Environment Ministry).

— The exemption should have been regarded as necessary for the economic development of the region of Sardinia.

— In the opinion of the Italian Government, once Directive 2003/96/EC entered into force, there was no longer any obligation to give notification of the tax benefit in question as Article 18 in conjunction with Annex II of that directive expressly provided that the disputed tax should remain in force and unaffected until 31 December 2006. Moreover, the content of those provisions is analogous to that of Article 1(2) of Council Decision 2001/224/EC.

Finally, the applicant pleads infringement of the principle of the protection of legitimate expectations and the presumption of the legality of Community provisions.

Action brought on 23 February 2006 — FLS Plast v Commission

(Case T-64/06)

(2006/C 96/42)

Language of the case: English

Parties

Applicant: FLS Plast A/S (Copenhagen, Denmark) [represented by: K. Lasok, QC, and M. Thill-Tayara, lawyer]

Defendant: Commission of the European Communities

Form of order sought

— Annul Articles 1(h) and 2(f) of 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 they apply to the applicant;

— alternatively, amend Article 2(f) of the Contested Decision and substantially reduce the amount of the fine imposed jointly and severally on FLP Plast in exercise of the Court's unlimited jurisdiction, 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;

— order the Commission to pay FLS Plast's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

By the Contested Decision the Commission found that the applicant had infringed Article 81 EC by participating in a complex of agreements and concerted practices in the plastic industrial bags sector, affecting Belgium, France, Germany, Luxembourg, the Netherlands and Spain, consisting in the fixing of prices and the establishment of common price calculation models, the sharing of markets and the allocation of sales quotas, the assignment of customers, deals and orders, the submission of concerted bids in response to certain invitations to tender and the exchange of individualised information. The applicant's infringement related to the conduct of another company, Trioplast Wittenheim SA ('TW'), which was found to have participated in the cartel in question. The applicant had owned shares of TW and, for most of the period for which the applicant was found liable, TW was its wholly owned subsidiary. A fine was imposed on TW, and the applicant was made jointly and severally liable for part of that fine.

Without contesting the existence and duration of the cartel or the participation of its former subsidiary, the applicant contends that the Commission erred in law in determining the amount of the fine it imposed on it. The applicant points out that the part of the fine on TW for which the applicant was made liable is manifestly disproportionate to the period during which it held shares in TW.

The applicant further submits that the Contested Decision violates the principles of non-discrimination and proportionality, to the extent that it held both the applicant and its own parent company liable for TW's conduct, even though it decided not to address the Contested Decision to intermediate holding companies and did not, in fact, address it to such companies other than the applicant.

The applicant also submits that it was not aware of TW's unlawful conduct, did not exercise influence over its management and was not part of the undertaking (TW) involved in the infringements referred to in the Contested Decision and that, therefore, the Contested Decision is unlawful and should be annulled.

In the alternative, the applicant requests the Court to reduce the amount of the fine, in exercise of its unlimited jurisdiction. In this context, it puts forward that the fine imposed on TW was too high since past practice and the gravity of the infringement do not justify the level of the basic amount of the fine; that the Commission erred in determining the duration of the infringement for TW; and that the Commission failed to assess whether the fines imposed on TW and the applicant complied with the 10 % ceiling rule.

With regard to the fine imposed on itself, the applicant also contends that it is disproportionately high, taking into account the lack of deterrent effect, the duration and the intensity of the infringement. Further, the applicant argues that the Commission erred in failing to reduce its liability in accordance with the Leniency Notice, more particularly by failing to pass the 30 % reduction granted to TW on to the applicant's own liability and refusing to grant the applicant a reduction. Finally, the applicant invokes the violation of the principle *non bis in idem* and the principle according to which penalties should relate to the specific circumstances of each applicant; in this context, it points out that although it was the parent company of TW for only 35 % of the period of the latter's involvement in the cartel, it was made liable to pay 85.7 % of TW's fine.

Action brought on 24 February 2006 — FLSmidth v Commission

(Case T-65/06)

(2006/C 96/43)

Language of the case: English

Parties

Applicant: FLSmidth & Co. A/S (Valby, Denmark) [represented by: J.-E. Svensson, lawyer]

Defendant: Commission of the European Communities