

Action brought on 1 March 2006 — Italian Republic v Commission

(Case T-77/06)

(2006/C 96/51)

*Language of the case: Italian***Parties***Applicant:* Italian Republic (represented by: Paolo Gentili, Avvocato dello Stato)*Defendant:* Commission of the European Communities**Form of order sought**

The applicant claims that the Court should:

- annul the European Commission's Memorandum No 14 012 of 19 December 2005 concerning the POR Sicilia Programme (claim for payment No 2005 3489) containing a request to 'comply with the conditions set out in Commissioner Barnier's letter of 29 July 2003 as to the eligibility of the payments on account made in the context of aid schemes';
- annul the European Commission's Memorandum No 14 134 of 21 December 2005 concerning the POR Sicilia Programme (claim for payment SYSFIN 2005 3554) containing a request to 'comply with the conditions set out in Commissioner Barnier's letter of 29 July 2003 as to the eligibility of the payments on account made in the context of aid schemes';
- annul the European Commission's Memorandum No 765 of 25 January 2006 concerning the programme entitled 'PON Ricerca scientifica, sviluppo tecnologico e alta formazione' (Scientific Research, Technological Development and Higher Education) (claim for payment No 20 053 784) containing a request to 'comply with the conditions set out in Commissioner Barnier's letter of 29 July 2003 as to the eligibility of the payments on account made in the context of aid schemes';
- annul the European Commission's Memorandum No 1 459 of 13 February 2006 concerning the POR Sicilia Programme (claim for payment SYSFIN 2006 0029) containing a request to 'comply with the conditions set out in Commissioner Barnier's letter of 29 July 2003 as to the eligibility of the payments on account made in the context of aid schemes';
- order the Commission of the European Communities to pay the costs.

Pleas in law and main argumentsThe pleas in law and main arguments are those invoked in Case T-345/04 *Italian Republic v Commission* (!).

(!) OJ C 262, 23.10.2004, p. 55.

Action brought on 23 February 2006 — Sachsa Verpackung v Commission

(Case T-79/06)

(2006/C 96/52)

*Language of the case: French***Parties***Applicant:* Sachsa Verpackung GmbH (Wieda, Germany) (represented by: F. Puel and L. François-Martin, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

The applicant claims that the Court should:

- set aside Articles 1(k), 2(i) and 4(21) of the decision;
- in the alternative, amend Article 2(i) of the decision and reduce the amount of the fine;
- order the European Commission to pay all of the costs of the proceedings.

Pleas in law and main arguments

By the present action the applicant seeks the partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/F/38.354 — Industrial bags), by which the Commission found that the undertakings to which the decision was addressed, which included the applicant, had breached Article 81 of the EC Treaty by participating in agreements or concerted practices within the industrial-bags sector in Belgium, the Netherlands, Luxembourg, Germany, France and Spain. In the part of its decision relating to the applicant, the Commission found that the applicant had taken part in the single and continuous breach and ordered it to pay a fine.

In support of its first submission, which it presents as its main submission, the applicant sets out three pleas in law.

In the first of these, it alleges that the Commission committed a manifest error of appraisal with regard to the extent of the applicant's involvement in the cartel when it formed the view that the applicant had played an active role in setting general quotas, allocating customers and fixing prices.

The second plea in law alleges a lack of reasons inasmuch as the Commission failed to set out adequate grounds in law to substantiate its claim that the applicant had participated in a 'Germany' subgroup within the cartel.

By its third plea in law, the applicant submits that the Commission breached Article 23(2) of Regulation (EC) No 1/2003⁽¹⁾ and Article 15 of Regulation No 17/62⁽²⁾ by taking the view, erroneously in the applicant's opinion, that it was not an independent undertaking and by deciding, also incorrectly, that Groupe Gascogne, its parent company, was to be held jointly and severally liable for the payment of the fine. The applicant further argues that the Commission erred in its determination

of the portion of the fine attributable to the applicant for the period of its participation in the breach, which consequently exceeded the threshold of 10 % of its turnover.

In support of the alternative form of order which it seeks, the applicant submits that the Commission failed correctly to assess the amount of the fine imposed and that it infringed the principle of proportionality by misconstruing the seriousness and duration of the breach, and by failing to take account of mitigating circumstances and of the applicant's cooperation under the leniency notice⁽³⁾.

⁽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).

⁽²⁾ Regulation No 17 of the Council of 6 February 1962, First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87).

⁽³⁾ Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).