

**Action brought on 10 August 2006 — Arkema and Others
v Commission**

(Case T-217/06)

(2006/C 249/32)

*Language of the case: French***Parties**

Applicants: Arkema France SA (Puteaux, France), Altuglass International SA (Puteaux, France) and Altumax Europe SAS (Puteaux, France) (represented by: A. Winckler, S. Sorinas and P. Geffriaud, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- on the basis of Article 230 EC, annul the decision adopted by the Commission of the European Communities on 31 May 2006 in Case COMP/F/38.645 in so far as it concerns Arkema;
- in the alternative, annul or reduce, on the basis of Article 229 EC, the amount of the fine imposed on it by that decision;
- order the Commission of the European Communities to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment in part of Commission Decision C(2006) 2098 final of 31 May 2006 (Case COMP/F/38.645 — Methacrylates) in so far as it held the applicant's parent companies liable for the infringement which the applicant committed in breach of Article 81 EC and Article 53 of the EEA Agreement by participating in a complex of agreements and concerted practices in the methacrylates sector consisting of discussions on prices, of the agreement, implementation and monitoring of price agreements, of the exchange of commercially important and confidential market and/or company relevant information, and also of participation in regular meetings and other contacts to facilitate the infringement. In the alternative, the applicant seeks a reduction in the amount of the fine imposed on it by the contested decision.

In support of its principal claims, the applicant argues that, by holding its parent companies liable for the infringement it committed, on the basis of a mere presumption linked to the fact that almost all its capital was held by those companies at the material time, the Commission made errors of law and fact in the application of the rules relating to holding a parent company liable for infringements committed by its subsidiary and also infringed the principle of non-discrimination. The applicant also takes the view that, by failing to respond to the

arguments it advanced in the course of the administrative procedure which sought to show that it enjoyed complete autonomy in determining its commercial policy, and this despite the parent companies' holding almost all its share capital at the material time, the Commission acted in breach of its duty to state reasons under Article 253 EC and the principle of good administration.

In the alternative, the applicant seeks the annulment or reduction of the fine imposed on it by the contested decision. In support of its claims in this regard, it puts forward several pleas alleging inter alia errors of law and fact committed by the Commission when fixing the starting amount of the fine. The applicant argues that this amount is excessive since the infringement, it maintains, had only a very limited impact on the product markets at issue. The applicant argues further that the Commission acted in breach of the duty to state reasons and the principle of good administration in taking the view that the actual impact of the infringement on the market should not be taken into account when determining the starting amount of the fine.

Furthermore, the applicant submits that the Commission erred in fact and in law by increasing by 200 % the starting amount of the fine by way of a deterrent by taking as a basis the turnover of its parent company at the material time, since that company could not, according to the applicant, be held liable for the infringement in the light of the commercial autonomy the applicant enjoyed at the material time and of the fact that the directors of the parent companies were not involved in the practices at issue.

The applicant also claims that in order to increase the level of the fine imposed on it, the Commission took into account decisions against it from 1984, 1986 and 1994 and that, in so doing, its application of the notion of repeated infringement was manifestly excessive and contrary to the principles of lawful punishment and legal certainty. Moreover, the applicant argues that by applying the principle of repeated infringement, the Commission acted in breach of the principle of 'non bis in idem' and the principle of proportionality, since the existence of earlier decisions against it had already been taken into account on several occasions by the Commission in recent decisions.

The applicant further submits that the Commission made an error of fact in that it did not grant a reduction in the fine on account of the fact that certain offending practices were not actually implemented.

By its final plea, the applicant asserts that the Commission should also have taken into account, when fixing the amount of the fine, by way of other factors, the fact that the applicant was recently ordered to pay significant fines.