

In the alternative, the claimant submits that the Commission incorrectly determined the amount of the fine imposed on it. The Commission imposed a fine based on a period of two years and five months during which the claimant allegedly held 100 % of the shares in BAM NBM, whereas that period in fact amounted only to one year and five months.

Action brought on 5 December 2006 — Koninklijke Wegenbouw Stevin v Commission

(Case T-357/06)

(2007/C 20/36)

Language of the case: Dutch

Action brought on 5 December 2006 — Koninklijke Volker Wessels Stevin v Commission

(Case T-356/06)

(2007/C 20/35)

Language of the case: Dutch

Parties

Claimant: Koninklijke Volker Wessels Stevin NV (represented by: E.H. Pijnacker Hordijk and Y. de Vries, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- set aside Articles 1, 2 and 3 of the Decision of 13 September 2006 relating to a proceeding under Article 81 EC (Case No COMP/38.456 — Bitumen — NL), or at least set that decision aside to the extent to which it is addressed to Koninklijke Volker Wessels Stevin;
- order the Commission to pay its own costs and also those of Koninklijke Volker Wessels Stevin.

Pleas in law and main arguments

The claimant is challenging the Commission's decision of 13 September 2006 relating to a proceeding under Article 81 EC (Case No COMP/38.456 — Bitumen — NL), which imposed a fine on the claimant for breach of Article 81 EC.

In support of its action, the claimant invokes a breach of Article 81 EC and of Articles 7 and 23(2) of Regulation No 1/2003. According to the claimant, the Commission applied an incorrect standard for the purpose of determining the liability of a parent company and in so doing wrongly concluded that the claimant was principally liable for the alleged conduct of Koninklijke Wegenbouw Stevin B.V.

Parties

Claimant: Koninklijke Wegenbouw Stevin BV (represented by: E. H. Pijnacker Hordijk and Y. de Vries, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- set aside, in relation to the claimant, the Commission's decision of 13 September 2006, notification of which Koninklijke Wegenbouw Stevin received on 25 November 2006, relating to a proceeding under Article 81 EC (Case No COMP/38.456 — Bitumen — NL — C(2006) 4090 final);
- in the alternative, annul Article 2 of the decision in relation to the claimant, or in any event reduce substantially the fine imposed on the claimant by Article 2 of the decision;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The claimant is challenging the Commission's decision of 13 September 2006 relating to a proceeding under Article 81 EC (Case No COMP/38.456 — Bitumen — NL), by which a fine was imposed on the claimant for breach of Article 81 EC.

In support of its action, the claimant alleges, in the first place, that there was an incorrect analysis of the facts, resulting in a defective appraisal of the conduct of the road construction companies in the light of Article 81 EC. According to the claimant, the suppliers of bitumen were involved in a classic and extremely serious breach of the European competition rules. It states that the five leading customers for bitumen for road construction attempted to establish a counter-balance to this cartel with the primary objective of securing for themselves collective rebates that were as favourable as possible.

The claimant also invokes a breach of Article 81 EC and of Article 23 of Regulation No 1/2003 in regard to the determination of the level of the fine imposed. According to the claimant, the basic amount of the fine was too high and the increases imposed for non-cooperation and its ostensible role as instigator and cartel leader were unjustified.

In conclusion, the claimant submits that the Commission refused to allow it access to the reactions to the heads of complaint of all the other parties to which those heads of complaint were addressed. In the claimant's view, that course of conduct is contrary to the rights of the defence.

Action brought on 5 December 2006 — Wegenbouwmaatschappij J. Heijmans v Commission

(Case T-358/06)

(2007/C 20/37)

Language of the case: Dutch

Parties

Claimant: Wegenbouwmaatschappij J. Heijmans B.V. (represented by: M.F.A.M. Smeets and A.M. van den Oord, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- set aside, in whole or in part, the decision addressed to Heijmans N.V. and Heijmans Infrastructuur B.V.;
- set aside or reduce the fine imposed on Heijmans N.V. and Heijmans Infrastructuur B.V.;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The claimant is challenging the Commission's decision of 13 September 2006 relating to a proceeding under Article 81 EC (Case No COMP/38.456 — Bitumen — NL). Although the decision is not addressed to the claimant, it takes the view that it is directly and individually concerned by it inasmuch as it is mentioned in the decision as being part of the Heijmans Group and must expect, by reason of the decision, to be held liable in regard to the conduct in issue.

In support of its action, the claimant first of all submits that there has been a breach of Article 81 EC and of Articles 2, 7 and 23(2) of Regulation No 1/2003 in that the Commission wrongly assumed that the Netherlands market for bitumen used in road construction constituted the relevant economic context for the appraisal of the evidence against Heijmans Infrastructuur B.V. The claimant further submits that the Commission also

wrongly assumed that Heijmans Infrastructuur B.V. was part of a permanent cartel of road construction undertakings operating with regard to the purchase of bitumen for road construction and, in that capacity, colluded with the suppliers of bitumen in the Netherlands with a view to restricting competition. Lastly, according to the claimant, the Commission unjustly failed, on the basis of the guidelines on horizontal cooperation, to check solely the consequences of the participation of Heijmans Infrastructuur B.V. in that collusion. ⁽¹⁾

Second, the claimant alleges that there has been a breach of Article 81 EC and of Articles 11 and 16 of Regulation No 1/2003, as well as infringement of the duty of care, the general principles of sound administration, the principle of equality and the rights of the defence by reason of the fact that the Commission disregarded the reasoned substantive and procedural defence submissions made by Heijmans Infrastructuur B.V. and Wegenbouwmaatschappij J. Heijmans B.V. during the administrative procedure as being an 'innocent interpretation of the events'.

Third, the claimant alleges infringement of the principle that reasons must be given in that the decision is unclear or ambiguous in certain vital sections.

By way of alternative submission, the claimant argues the Commission has adduced no, or insufficient, evidence to substantiate the claim that Heijmans Infrastructuur B.V. participated in the alleged infringement over the entire period thereof.

Also in the alternative, the claimant submits that the Commission incorrectly assessed the gravity and scope of the infringement. It argues that Heijmans Infrastructuur B.V. played merely a minor role on the relevant market.

⁽¹⁾ Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements (text with EEA relevance) (OJ 2001 C 3, p. 2).

Action brought on 5 December 2006 — Heijmans Infrastructuur v Commission

(Case T-359/06)

(2007/C 20/38)

Language of the case: Dutch

Parties

Claimant: Heijmans Infrastructuur B.V. (represented by: M.F.A.M. Smeets and A.M. van den Oord, lawyers)

Defendant: Commission of the European Communities