

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings. In the contested decision a fine was imposed on the applicant for breach of Article 81(1) EC and Article 53(1) of the EEA Agreement. According to the Commission, the applicant took part in a series of agreements in the form of price-fixing, establishing price lists and rebates, establishing mechanisms for the implementation of price increases, dividing up markets and customers and exchanging other economic information on the market for copper fittings and copper alloy fittings, from 12 December 1991 until 22 March 2001.

The applicant puts forward four pleas in support of its claim.

It is submitted, first, that the contested decision infringes Article 23(2) of Regulation (EC) No. 1/2003 ⁽¹⁾, on the ground that the defendant infringed fundamental principles in the assessment of fines by incorrectly determining the applicable turnover. The defendant, in assessing the severity of the alleged infringement by the applicant, should have taken into account the turnover of press fittings when determining the turnover, even though the applicant did not at any time participate in anti-competitive practices in respect of press fittings.

Secondly, the applicant submits that the Commission infringed Article 81(1) EC and Article 253 EC by incorrectly establishing the participation, and the duration of that participation, in the conduct of which it is accused. According to the applicant, the defendant failed to produce substantive evidence in relation to the applicant and erred in finding that infringements were committed.

In addition, the applicant alleges, in the alternative, breach of Article 81(1) EC and Article 253 EC, on the ground that the geographic scope of the infringements in Article 1 of the contested decision in relation to the applicant was incorrectly established.

Finally, the applicant alleges that Article 2 of the contested decision infringes Article 23(2) of Regulation No. 1/2003, on the ground that the Commission infringed fundamental principles in the assessment of fines. The applicant submits, in this connection, that the Guidelines on the method of setting fines ⁽²⁾ were incorrectly applied in that the Commission classed the infringement as particularly serious, incorrectly established the duration of the infringement, incorrectly increased the basic amount of the fine on account of the duration of the infringement and failed to assess the mitigating circumstances.

⁽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 2002 L 1, p. 1).

⁽²⁾ Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

Action brought on 14 December 2006 — Legris Industries v Commission of the European Communities

(Case T-376/06)

(2007/C 42/48)

Language of the case: French

Parties

Applicant: Legris Industries (Rennes, France) (represented by: A. Wachsmann and C. Pomiès, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Joints, together with the grounds on which the operative part was reached, in so far as that decision imposes a fine on the holding company Legris Industries by reason of the practices at issue of Comap being imputed to Legris Industries in its capacity as a holding company;
- allow the holding company Legris Industries to adopt the written pleadings, forms of order sought and claims submitted by Comap against the decision;
- order the Commission to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 EC (COMP/F-1/38.121 — Joints), concerning a series of agreements and concerted practices on the market for copper joints and copper alloys having as their object price fixing, the drawing up of price lists and lists of rebates and discounts, the putting in place of coordination arrangements for price increases, the sharing of national markets and customers, together with the exchange of other business information, in so far as that decision imposes a fine of the holding company Legris Industries by reason of the practices at issue of its former subsidiary Comap being imputed to it.

In support of its application, the applicant invokes the following pleas in law.

First, it argues that the Commission infringed Article 81 EC in imputing to it disputed infringements committed by its subsidiary Comap and, accordingly, in holding it jointly and severally liable for those infringements. It submits that the Commission infringed the principle of the legal and commercial autonomy of the subsidiary and the principle of personal responsibility in the field of competition law in considering that the holding by the applicant of the entire issued share capital of

the subsidiary was sufficient to establish the exercise of a determinative influence over the latter. The applicant also claims that the Commission committed errors of law, errors of fact and manifest errors of assessment in that it failed to adduce evidence to show that the holding company Legris Industries had effective control over the actings of Comap.

The applicant also claims that the Commission committed errors of law in that it failed to rebut the evidence put forward by the applicant to show Comap's autonomy, in particular as regards the determination and direction of its trading policy. The applicant claims to have demonstrated that it did not give instructions to Comap in relation to its conduct on the market, that its role was merely that of financial supervision which did not include the giving of directions to its subsidiaries in budgetary matters and that Comap had access to its own sources of finance. Consequently, it argues that mere evidence of the connection established by its holding in the capital of the subsidiary and the direct consequences resulting from such a connection, on which, according to the applicant, the Commission based its decision to impute the infringements committed by its subsidiary to the applicant, cannot be evidence of the exercise of effective control over the actings of that subsidiary.

Action brought on 14 December 2006 — Comap v Commission

(Case T-377/06)

(2007/C 42/49)

Language of the case: French

Parties

Applicant: Comap SA (Lyons, France) (represented by A. Wachsmann and C. Pommiès, lawyers)

Defendant: Commission of the European Communities

Forms of order sought

- annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Joints, together with the grounds on which the operative part of the decision was reached, in so far as that decision censures Comap for periods other than that between December 1997 and March 2001, in relation to which Comap does not challenge the facts set out by the Commission;
- amend Articles 1 and 2 and the grounds on which they were reached, by reducing the amount of the fine of EUR 18.56 million imposed on Comap;
- order the Commission to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 EC (COMP/F-1/38.121 — Joints), concerning a series of agreements and concerted practices on the market for copper joints and copper alloys having as their object price fixing, the drawing up of price lists and lists of rebates and discounts, the putting in place of coordination arrangements for price increases, the sharing of national markets and customers, together with the exchange of other business information, in so far as that decision censures Comap for periods other than that between December 1997 and March 2001, in relation to which Comap does not challenge the facts set out by the Commission. In the alternative, it seeks a reduction in the amount of the fine imposed on it by the contested decision.

In support of its application, the applicant invokes the following pleas in law.

First, it argues that the Commission infringed Article 81 EC and committed errors of law, errors of fact and manifest errors of assessment in finding that the alleged cartel continued after on-the-spot investigations by the Commission in March 2001, until April 2004.

Secondly, the applicant claims that the Commission infringed Article 81(1) EC and Article 25 of Regulation No 1/2003 ⁽¹⁾, in that it did not acknowledge that, since no evidence of anti-competitive practices could be produced, the alleged infringement was interrupted for a period of 27 months, between September 1992 and December 1994, with the result, according to the applicant, that facts occurring prior to December 1994 were subject to limitation when the Commission's investigation opened in January 2001.

In the alternative, the applicant puts forward a plea based on infringement of Article 81(1) EC and Article 23(2) of Regulation No 1/2003, together with the Guidelines on the method of setting fines ⁽²⁾ and the Leniency Notice ⁽³⁾, in that the Commission failed to comply with the rules on the method of setting fines. It argues that the Commission infringed the principle of proportionality and the principle of equal treatment in that the starting amount for the purposes of calculating the fine imposed on Comap was, according to it, unduly high in comparison with the starting amounts chosen in respect of the other undertakings censured by the contested decision, notwithstanding that their competitive position was comparable to the position held on the market by the applicant.

⁽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⁾ Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

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