

Action brought on 16 February 2007 — Shell Petroleum and Others v Commission**(Case T-38/07)**

(2007/C 82/96)

*Language of the case: English***Parties**

Applicants: Shell Petroleum NV (The Hague, The Netherlands), Shell Nederland BV (The Hague, The Netherlands) and Shell Nederland Chemie BV (Rotterdam, The Netherlands) (represented by: T. Snoep and J. Brockhoff, lawyers)

Defendant: Commission of the European Communities

Form of order sought

SPNV requests the Court:

- to annul the decision, in full, insofar as it is addressed to SPNV;
- in the alternative:
 - to annul Article 2(d) of the decision, or
 - to reduce the fine imposed as appropriate; and
- to order the Commission to pay the costs.

SNBV requests the Court:

- to annul the decision, in full, insofar as it is addressed to SNBV;
- in the alternative:
 - to annul Article 2(d) of the decision, or
 - to reduce the fine imposed as appropriate; and
- to order the Commission to pay the costs.

SNC requests the Court:

- to annul Article 2(d) of the decision or to reduce the fine imposed as appropriate; and
- to order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, by which the Commission found that the applicants, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging commercial information relating to prices, competitors and customers.

In support of their application, the applicants submit that the Commission violated Article 81 EC and Articles 7 and 23(2) and (3) of Council Regulation No 1/2003 ⁽¹⁾ by:

- a) imputing the infringement also to Shell Petroleum NV and Shell Nederland BV even though the Commission acknowledges that only Shell Nederland Chemie BV participated directly in the infringement;
- b) increasing the basic amount of the fine to be imposed on the applicants by 50 % for recidivism in breach of the principles of proportionality and legal certainty;
- c) applying a multiplier for deterrence in breach of the principles of equal treatment and proportionality; and
- d) setting the starting amount of the fine to be imposed on the applicants in breach of the Guidelines on the method of setting fines ⁽²⁾ and the principles of proportionality and equal treatment.

In the alternative, the applicants invoke a violation of the duty to state reasons under Article 253 EC.

⁽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⁾ Commission Notice of 14 January 1998 entitled '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 6 February 2007 — ENI v Commission**(Case T-39/07)**

(2007/C 82/97)

*Language of the case: Italian***Parties**

Applicant: ENI SpA (Rome, Italy) (represented by: Prof. G.M. Roberti and I Perego, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul that part of the contested decision which holds the applicant responsible for the conduct that is being penalised;
- annul or reduce the fine imposed under Article 2 of the decision;
- order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the same decision that is contested in Case T-38/07 *Shell Petroleum and Others v Commission*.

ENI considers the contested decision to be unlawful in that it imputes liability to it solely on the ground of its role as the head of the group which controls the entire share capital of the company that has been held liable for the alleged collusion complained of. In those circumstances, the applicant submits that:

- the Commission has based its decision essentially on an a presumption of strict liability connected to ownership structure that is not borne out and is contrary to the principles laid down by practice and in Community case-law relating to the application of Article 81 EC in connection with groups of companies. Such an approach also breaches the basic principle that liability and penalties must be specific to the offender and the principle of legality, being the result of clear errors of assessment of the factual material provided by ENI to rebut the Commission's presumption. In this connection, the Commission failed properly to state the reasons for its assessment, in breach of the requirement laid down in Article 253 of the EC Treaty.
- moreover, the contested decision does not even take into account the principle of the limited liability of capital companies to be found in company law that is common to the laws of all the Member States, to international legal practice and to Community law itself, an approach which, at the same time, appears to be inconsistent with the criteria laid down for the implementation of Community competition rules in cases involving succession/transfer. The contested decision similarly fails totally to provide reasons in respect of those issues.

ENI therefore seeks the annulment of or, at least, a considerable reduction in the fine imposed, given that the Commission:

- has failed to assess the impact on the market concerned of the offending conduct allegedly established;
- improperly established the aggravating circumstance of repeated infringement, referring, moreover, to decisions under Article 81 EC dating back many years which did not in any way concern the applicant, even by virtue of its role as head of a group.
- moreover, by erroneously excluding Syndial from the addressees of the contested decision, contrary to the criteria laid down by case-law, infringed Article 23 of Regulation No 1/2003, failing to take account of that company's turnover in that connection.

Appeal brought on 14 February 2007 by José António de Brito Sequeira Carvalho against the judgment of the Civil Service Tribunal delivered on 13 December 2006 in Case F-17/05, de Brito Sequeira Carvalho v Commission

(Case T-40/07 P)

(2007/C 82/98)

Language of the case: French

Parties

Appellant: José António de Brito Sequeira Carvalho (Brussels, Belgium) (represented by O. Martins, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- declare this appeal admissible and well founded;
- order the Commission to produce a file containing all the documents concerning the applicant in his administrative file held at the Investigation and Disciplinary Office of the Commission, the medical service and in any other place starting with the procedural documents pertaining to the original proceedings on 2 February 2001 relating to alleged evidence of defamatory acts attributed to the applicant;
- order the Commission to state the legal basis for the initiation of a medical assessment of the appellant's mental health by a Commission official immediately upon his appointment in an administrative investigation into the alleged defamation, and provide a list of documents from the original proceedings;
- annul the judgement of the Civil Service Tribunal of the European Union in Case F-17/05;
- declare the medical assessment which was substituted for the administrative proceedings still pending since 2001 to be illegal;
- declare that there has been a breach of the principle that a reasonable period of time should be observed in the proceedings, which have not yet been closed;
- declare, on the grounds of lack of jurisdiction, lack of reasoning and non-existence, the act of a Commission official of 18 June 2004 to be void and further declare that it is not imputable to the appellant;
- declare both that the Appointing Authority's act of 28 June 2004 is legally non-existent, and that it cannot be raised against the appellant, to whom it was never communicated;
- declare that a parallel file containing false information of a personal nature adversely affecting the appellant is kept by the Commission;