Also, the appellant argues that this complaint is directly connected to his second plea alleging infringement of the principle of non-discrimination on the grounds of unlawful composition of the selection board. On that basis, the appellant claims the Civil Service Tribunal did not properly implement the abovementioned principle, or at least failed to provide adequate reasoning for the particular features of the competition at stake; while it misunderstood his pleas and failed to address a number of them.

Action brought on 16 February 2007 — Kaučuk v Commission

(Case T-44/07)

(2007/C 82/102)

Language of the case: English

Parties

Applicant: Kaučuk a.s. (Kralupy nad Vltavou, Czech Republic) (represented by: M. Powell and K. Kuik, solicitors)

Defendant: Commission of the European Communities

Form of order sought

— Annul Articles 1 to 3 of the contested decision in whole or in part insofar as they are addressed to the applicant;

— alternatively, annul Article 2 of the contested decision insofar as it imposes a fine of EUR 17.55 million on Kaučuk and fix a substantially lower fine; and

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant seeks the partial 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 applicant, 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 its application, the applicant submits that the Commission:

— erred in law by imputing the conduct of its sales intermediary Tavorex, an independent legal entity, to the applicant;

— erred by failing to prove to the requisite legal standard that Tavorex was involved in a single and continuous infringement from November 1999 until November 2002;

— committed a manifest error of appreciation by finding the same facts sufficient to prove Tavorex's involvement but insufficient to prove the involvement of another producer;

— erred in law by applying EC competition law to the applicant and Tavorex without establishing a sufficient connection between the applicant/Tavorex, the activity concerned and the territory of the European Communities contrary to the case law on extraterritorial application of EC competition law;

— committed a manifest error of law and appreciation in finding that the applicant, through Tavorex, committed an infringement regarding butadiene rubber, a product the applicant neither produces nor sells;

— failed to establish, for the purposes of setting the fine, whether the applicant, through Tavorex, committed the infringement intentionally or negligently; and

— committed a manifest error of law and appreciation by failing to apply its Fining Guidelines.

Action brought on 16 February 2007 — Unipetrol v Commission

(Case T-45/07)

(2007/C 82/103)

Language of the case: English

Parties

Applicant: Unipetrol a.s. (Prague, Czech Republic) (represented by: J. Matějček and I. Janda, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision in whole or in part, at least as far as Unipetrol is concerned;

— otherwise exercise the Court's unlimited jurisdiction; and

— order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

The applicant seeks 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 applicant, 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 its application, the applicant submits that the Commission:

— committed an error of appreciation by rejecting the evidence that the applicant's holding of all the shares of the company Kaučuk was of a purely financial nature or, alternatively, committed a manifest error of appreciation by rejecting evidence which demonstrated that Kaučuk acted on the market as an autonomous entity, without any intervention by the applicant in Kaučuk's sales and marketing policy concerning emulsion styrene butadiene rubber; and

— erred in law by imputing the same conduct twice to different entities, i.e. to Kaučuk and to Kaučuk's shareholder, the applicant.

The rest of the pleas in law and main arguments raised by the applicant are identical or similar to those raised in Case T-44/07, *Kaučuk* v *Commission*.

Action brought on 21 February 2007 — ratiopharm GmbH v OHIM (BioGeneriX)

(Case T-47/07)

(2007/C 82/104)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented by Rechtsanwalt S. Völker)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 20 December 2006 in appeal No. R1047/2004-4 concerning Community trade mark application No. 001701762.

— Order the Office for Harmonisation in the Internal Market to pay its own costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark BioGeneriX for goods and services in the classes 5, 35, 40 and 42 (Application No. 1 701 762).

Decision of the Examiner: Refusal to register.

Decision of the Board of Appeal: Rejection of the appeal.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No. 40/94 ([1]), on the basis that the trade mark applied for demonstrates the minimum distinctive character required and that there is no specific need for availability.

([1]) Council Regulation No. 40/94 of 20 December 1993 on the Community trade mark (OJ 1994, L 11, p. 1).

Action brought on 21 February 2007 — ratiopharm v OHIM (BioGeneriX)

(Case T-48/07)

(2007/C 82/105)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented by S. Völker, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The applicant claims that the Court should

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 December 2006 in Case R 1048/2004-4 concerning the application for Community trade mark No 002603124;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.