

- Breach of Article 23(2) of Regulation (EC) No 1/2003 <sup>(1)</sup>, inasmuch as, with regard to the upper fine limit of 10 % of the undertaking's turnover, the Commission based itself on the turnover of the concern and not on that of the applicants;
- Legally defective application of the Notice on immunity from fines and reduction of fines <sup>(2)</sup> inasmuch as insufficient account was taken of the added value provided by the cooperation of the applicants.

<sup>(1)</sup> 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).

<sup>(2)</sup> Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

## Action brought on 7 May 2007 — ThyssenKrupp Ascenseurs Luxembourg v Commission

(Case T-148/07)

(2007/C 155/59)

*Language of the case: German*

### Parties

*Applicant:* ThyssenKrupp Ascenseurs Luxembourg Sàrl (Howald, Luxembourg) (represented by: K. Beckmann, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

- annul the contested decision in so far as it relates to the applicant;
- in the alternative, reduce as appropriate the amount of the fine imposed jointly and severally on the applicant in the contested decision;
- order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

The applicant is challenging Commission Decision C(2007) 512 final of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators. In the contested decision, fines were imposed on the applicant and other undertakings on the

ground of their participation in a cartel relating to the installation and maintenance of lifts and escalators in Luxembourg. In the view of the Commission, the undertakings concerned acted in breach of Article 81 EC.

In support of its action, the applicant puts forward the following pleas in law:

- Lack of competence on the part of the Commission in the absence of any significance at inter-State level of the local infringement of which the applicant is accused;
- Infringement of the *ne bis in idem* principle inasmuch as the Commission failed to take into account the amnesty decision which the Luxembourg cartel authority adopted in the applicant's favour before the present proceedings were instituted;
- Absence of the conditions required to establish that the applicant bears joint and several liability with the companies hierarchically above it, inasmuch as it is legally and economically independent;
- Disproportionate nature of the amount of the fine as set when considered in the light of the applicant's *de facto* market significance;
- Illegality of the deterrent multiplication factor as the applicant's turnover was the only relevant factor for the purpose of calculating the fine and that turnover did not justify application of that multiplication factor;
- Lack of justification for the repeat offender surcharge in the context of the fine calculation by reasons of errors of law in the inclusion of previous fines and errors of appraisal;
- Breach of Article 23(2) of Regulation (EC) No 1/2003 <sup>(1)</sup>, inasmuch as, with regard to the upper fine limit of 10 % of the undertaking's turnover, the Commission based itself on the turnover of the concern and not on that of the applicant;

— Legally defective application of the Notice on immunity from fines and reduction of fines <sup>(2)</sup> inasmuch as insufficient account was taken of the added value represented by the applicant's cooperation;

— Failure to take adequate account of the applicant's cooperation outside the context of the Notice on immunity from fines and reduction of fines.

<sup>(1)</sup> 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).

<sup>(2)</sup> Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).