

Action brought on 20 December 2007 — Compañía Española de Petróleos (Cepsa) v Commission

(Case T-497/07)

(2008/C 64/81)

Language of the case: Spanish

Parties

Applicant: Compañía Española de Petróleos (Cepsa) (Madrid, Spain) (represented by: P. Pérez-Llorca Zamora, O. Armengol i Gasull and A. Pascual Morillo, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul Articles 1 to 4 of the Commission Decision [C(2007) 4441] to the extent that they declare respectively that Compañía Española de Petróleos SA has infringed Article 81 EC, impose a fine on it, order it immediately to cease the infringement and include it as an addressee of the Decision
- Alternatively, reduce the fine imposed on Compañía Española de Petróleos SA, and
- Order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The action is directed against Commission Decision C(2007) 4441 final of 3 October 2007 in the Case COMP/38710 — Bitumen Spain. In the contested decision, the Commission declared that the applicant, together with other companies, had infringed Article 81 EC by having taken part, over a certain period, in a set of agreements and concerted practices in the market for penetration bitumen, namely agreements for sharing the market and coordinating prices. In respect of those infringements the Commission imposed a fine for which the applicant and another company are jointly and severally liable.

In support of its claims, the applicant alleges first that there is an error of law in attributing to the applicant the infringement committed by another company by applying the case-law on 'economic unit'. Further the applicant considers that the Commission made a manifest error of assessment of the facts by rejecting the evidence produced by the applicant in proof of the independence of the company which committed the infringement and by considering that there were many factors indicating that the latter company was not autonomous. In that context, the applicant also considers that the Commission infringed the obligation to state reasons by rejecting without foundation the arguments of the applicant on the independence of the company which committed the infringement.

Alternatively, in respect of the amount of the fine, the applicant complains that the Commission infringed the principle of sound administration and the right of the applicant to a procedure without undue delays by not adopting the statement of objections in a reasonable time in light of the information available, infringed the principle of proportionality and made a manifest error of assessment by not taking into account that the applicant implemented a programme of compliance.

Action brought on 27 December 2007 — Republic of Bulgaria v Commission of the European Communities

(Case T-499/07)

(2008/C 64/82)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: Anani Anaviev, Daniela Drambozova and Elina Petranova)

Defendant: Commission of the European Communities

Form of order sought

- on the basis of Article 230 EC, to annul in its entirety Commission Decision C(2007) 5255 final of 26 October 2007 concerning the national allocation plan for the period from 2008 to 2012 for the allocation of greenhouse gas emissions allowances, which was adopted by Bulgaria pursuant to Directive 2003/87/EC of the European Parliament and of the Council,

alternatively,

- on the basis of Article 230 EC, to annul Commission Decision C(2007) 5255 final of 26 October 2007 concerning the national allocation plan for the period from 2008 to 2012 for the allocation of greenhouse gas emissions allowances, which was adopted by Bulgaria pursuant to Directive 2003/87/EC of the European Parliament and of the Council, to the extent that that decision specifies the total number of allowances to be allocated,
- to order the Commission of the European Communities to bear the costs incurred by the Republic of Bulgaria in connection with the proceedings.

Pleas in law and main arguments

The applicant claims that the contested Commission Decision C(2007) 5255 final of 26 October 2007 concerning the national allocation plan for the period from 2008 to 2012 for the allocation of greenhouse gas emissions allowances should be annulled in whole or in part for the following reasons:

Substantial procedural irregularities

The Commission rejected the Bulgarian national allocation plan, without providing adequate reasons for doing so, on the basis that the plan failed to satisfy criteria 1, 2, 3 and 10 of Annex III to Directive 2003/87/EC⁽¹⁾. In so doing, it infringed Article 253 EC.

The contested decision was adopted after the expiry of the period laid down in Article 9(3) of Directive 2003/87/EC.

Prior to the adoption of the decision, the Commission did not give Bulgaria the opportunity to present its objections to the national allocation plan being assessed on the basis of the latest version of the PRIMES model. In so doing, it infringed the right to a fair hearing.

Infringement of the EC Treaty or of a rule of law relating to its application

Article 9(1) and (3), together with Article 11(1), of Directive 2003/87/EC provides for the Member States to have sole competence to determine the total quantity of emissions allowances. The Commission is to monitor the application of the criteria set out in Annex III to the Directive, but is, however, not entitled to determine the total quantity of the allowances without reference to the national allocation plan produced by the Member States. The Commission exceeded its powers of review under the directive, since it substituted for the methodology adopted by Bulgaria, which satisfied the criteria laid down in Annex III, a methodology which was unsuited to assessing the Bulgarian economy and failed to comply with some of the criteria.

The Commission assessed the Bulgarian national allocation plan on the basis of the latest version of the PRIMES model, the data for which were made available to Bulgaria only after the adoption of the contested decision. The Commission accordingly infringed the principle of loyal cooperation.

In assessing the national allocation plan under the PRIMES model, the Commission did not investigate the Bulgarian national allocation plan with reference to the objectives of Directive 2003/87/EC. In applying the PRIMES model to the assessment of the Bulgarian national allocation plan, the Commission wrongly concluded that the plan was incompatible with criteria 1, 2 and 3 of Annex III to the directive. The rejection of the plan and the reduction of the total quantity of allowances to be allocated by 37 % has led to a position where Bulgarian operators of installations are not put in the same position as other operators in the Community's trading system. The

Commission accordingly infringed the principles of proportionality and equal treatment.

Having regard to the judgment of the Court of First Instance in Case T-374/04, the Commission infringed the principles of the protection of legitimate expectations and of legal certainty, since it did not apply the instruments adopted by it pursuant to Directive 2003/87/EC to their full extent in assessing the Bulgarian national allocation plan. The principle of the protection of legitimate expectations was infringed because the Bulgarian national allocation plan was assessed by reference to the latest version of the PRIMES model, the data for which were made available to Bulgaria only after the adoption of the contested decision.

The principle of legal certainty was infringed because the Commission had recourse to a private document when assessing the Bulgarian national allocation plan.

The principle of sound administration was infringed because, in assessing the Bulgarian national allocation plan in relation to its compatibility with criteria 1, 2, and 3 laid down in Annex III to Directive 2003/87/EC, the Commission did not attentively and objectively investigate all relevant economic and ecological factors.

The Commission unlawfully applied the instruments which it adopted pursuant to Directive 2003/87/EC in assessing the Bulgarian national allocation plan. In so doing, it infringed criteria 1, 2, 3, 4, 6 and 10 of Annex III to Directive 2003/87/EC.

⁽¹⁾ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 27 December 2007 — Republic of Bulgaria v Commission of the European Communities

(Case T-500/07)

(2008/C 64/83)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: Anani Anaviev, Daniela Drambozova and Elina Petranova)

Defendant: Commission of the European Communities