

**Judgment of the General Court of 27 June 2012 — YKK and Others v Commission**

(Case T-448/07) <sup>(1)</sup>

*(Competition — Agreements, decisions and concerted practices — Markets for zip fasteners and ‘other fasteners’, and for attaching machines — Decision finding an infringement of Article 81 EC — Coordinated price increases, fixing of minimum prices, customer-sharing, market-sharing and exchange of other commercial information — Single and continuous infringement — Evidence — Nature and implementation of the infringement — Real impact — Leniency Notice — Fines — Upper limit — Dissuasive effect of the fine — Equal treatment — Proportionality)*

(2012/C 243/22)

Language of the case: English

**Parties**

*Applicants:* YKK Corp. (Tokyo, Japan), YKK Holding Europe BV (Sneek, Netherlands), YKK Stocko Fasteners GmbH (Wuppertal, Germany) (represented initially by H. Kaneko and C. Verannemann, lawyers, and subsequently by H. Kaneko, G. Williamson, Solicitor, and N. Green QC,

*Defendant:* European Commission (represented by: A. Bouquet and K. Mojzesowicz, acting as Agents)

**Re:**

Application for, primarily, annulment of Commission Decision C(2007) 4257 final of 19 September 2007 relating to a proceeding under Article 81 [EC] (Case COMP/39.168 — PO/Hard Haberdashery: Fasteners) in so far as it concerns the applicants and, in the alternative, annulment or reduction of their respective fines

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders YKK Corp., YKK Holding Europe BV and YKK Stocko Fasteners GmbH to pay the costs.

<sup>(1)</sup> OJ C 51, 23.2.2008.

**Judgment of the General Court of 5 July 2012 — Greece v Commission**

(Case T-86/08) <sup>(1)</sup>

*(EAGGF — Guarantee Section — Expenditure excluded from financing — Fruit and vegetables — Rural development — Non-compliance with payment deadlines — Compliance with a judgment of the Court — Authority of res judicata — Time-limit of 24 months — Principle of proportionality)*

(2012/C 243/23)

Language of the case: Greek

**Parties**

*Applicant:* Hellenic Republic (represented: initially by V. Kontolaimos, S. Charitaki and M. Tassopoulou and subsequently by M. Tassopoulou and I. Chalkias and K. Tsagaropoulos, acting as Agents)

*Defendant:* European Commission (represented by: H. Tserepalacombe, acting as Agent, and P. Katsimani, lawyers)

**Re:**

Application for annulment of Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2008 L 18, p. 12) in so far as it relates to certain expenditure incurred by the Hellenic Republic.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders the Hellenic Republic to pay the costs.

<sup>(1)</sup> OJ C 142, 7.6.2008.

**Judgment of the General Court of 27 June 2012 — Microsoft v Commission**

(Case T-167/08) <sup>(1)</sup>

*(Competition — Abuse of dominant position — Client PC operating systems — Work group server operating systems — Refusal of the dominant undertaking to supply and authorise the use of interoperability information — Fulfilment of obligations under a decision finding an infringement and imposing behavioural measures — Periodic penalty payment)*

(2012/C 243/24)

Language of the case: English

**Parties**

*Applicant:* Microsoft Corp. (Redmond, Washington, United States) (represented by: J.-F. Bellis, lawyer, and I. Forrester QC)

*Defendant:* European Commission (represented by: T. Christoforou, V. Di Bucci, F. Castillo de la Torre and N. Khan, acting as Agents)

*Interveners in support of the applicant:* The Computing Technology Industry Association, Inc., (Oakbrook Terrace, Illinois, United States) (represented by: G. van Gerven and T. Franchoo, lawyers); and Association for Competitive Technology, Inc., (Washington DC, United States) (represented: initially by D. Went and H. Pearson, Solicitors and subsequently by H. Mercer QC)

*Interveners in support of the defendant:* Free Software Foundation Europe eV, (Hamburg, Germany) and Samba Team (New York, New York, United States) (represented by: C. Piana and T. Ballarino, lawyers), Software & Information Industry Association (Washington DC) (represented by: T. Vinje and D. Dakanalis, Solicitors, and A. Tomtsis, lawyer), European Committee for Interoperable Systems (ECIS), (Brussels, Belgium) (represented by: T. Vinje, Solicitor, and M. Dolmans, N. Dodoo and A. Ferti, lawyers), International Business Machines Corp., (Armonk, New York, United States) (represented by: M. Dolmans and T. Graf, lawyers), Red Hat Inc. (Wilmington, Delaware, United States) (represented by C.-D. Ehlermann and S. Völcker, lawyers and C. O'Daly, Solicitor), and Oracle Corp., (Redwood Shores, California, United States), (represented by: T. Vinje, Solicitor and D. Paemen, lawyer)

#### Re:

Application for annulment of Commission Decision C(2008) 764 final of 27 February 2008 fixing the definitive amount of the periodic penalty payment imposed on Microsoft Corp. by Decision C(2005) 4420 final (Case COMP/C-3/37.792 — Microsoft) and, in the alternative, cancellation or reduction of the periodic penalty payment imposed on the applicant in that decision

#### Operative part of the judgment

The Court:

1. Fixes the amount of the periodic penalty payment imposed on Microsoft Corp. in Article 1 of Commission Decision C(2008) 764 final of 27 February 2008 fixing the definitive amount of the periodic penalty payment imposed on Microsoft Corp. by Decision C(2005) 4420 final (Case COMP/C-3/37.792 — Microsoft) at EUR 860 million;
2. Orders Microsoft to bear its own costs and to pay 95 % of the costs incurred by the European Commission, excluding the costs incurred by the Commission in connection with the intervention of The Computing Technology Industry Association, Inc. and the Association for Competitive Technology, Inc., and 80 % of the costs incurred by the Free Software Foundation Europe eV and Samba Team, the Software & Information Industry Association, the European Committee for Interoperable Systems, International Business Machines Corp., Red Hat Inc. and Oracle Corp.;
3. Orders the Commission to bear 5 % of its own costs, with the exception of the costs incurred in connection with the intervention of The Computing Technology Industry Association and the Association for Competitive Technology;
4. Orders The Computing Technology Industry Association and the Association for Competitive Technology each to bear their own costs including those incurred by the Commission in connection with their intervention;

5. Orders the Free Software Foundation Europe and Samba Team, the Software & Information Industry Association, the European Committee for Interoperable Systems, International Business Machines, Red Hat and Oracle to bear 20 % of their own costs.

(<sup>1</sup>) OJ C 171, 5.7.2008.

#### Judgment of the General Court of 28 June 2012 — I Marchi Italiani and Basile v OHIM — Osra (B. Antonio Basile 1952)

(Case T-133/09) (<sup>1</sup>)

*(Community trade mark — Invalidity proceedings — Community figurative mark B. Antonio Basile 1952 — Earlier national word mark BASILE — Relative ground for refusal — Limitation in consequence of acquiescence — Article 53(2) of Regulation (EC) No 40/94 (now Article 54(2) of Regulation (EC) No 207/2009) — Likelihood of confusion — Article 8(1) of Regulation No 40/94 (now Article 8(1) of Regulation No 207/2009)*

(2012/C 243/25)

Language of the case: Italian

#### Parties

*Applicants:* I Marchi Italiani Srl (Naples, Italy) and Antonio Basile (Giugliano in Campania, Italy); (represented by: G. Militerni, L. Militerni and F. Gimmelli, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by A. Sempio and subsequently by P. Bullock, acting as Agents)

*Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court:* Osra SA (Rovereta, Saint-Marin) (represented by: A. Masetti Zannini de Concina, R. Cartella and G. Petrocchi, lawyers)

#### Re:

Action brought against the Decision of the Second Board of Appeal of OHIM of 9 January 2009 (Case R 502/2008-2) relating to invalidity proceedings between Osra SA and M. Antonio Basile.

#### Operative part of the judgment

The Court:

1. Removes the name of the second applicant, Antonio Basile, from the list of applicants in Case T-133/09;
2. Dismisses the action;
3. Orders I Marchi Italiani Srl to pay the costs, other than those relating to the discontinuance;