

— As regards the tobacco premium system, infringement of Article 9(3) of Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco (OJ 1992 L 215, p. 70) and Articles 11 and 12 of Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 075/92 (OJ 1998 L 358, p. 17).

**Action brought on 20 February 2008 — Polimeri Europa and Eni v Commission**

(Case T-103/08)

(2008/C 92/88)

*Language of the case: Italian*

**Parties**

*Applicants:* Polimeri Europa SpA (Brindisi, Italy), Eni SpA (Rome, Italy) (represented by: M. Siragusa, G.M. Roberti, F. Moretti, I. Perego, F. Cannizzaro, V. Ruotolo, V. Larocca and D. Durante, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annul the Decision, in whole or in part, in particular so far as it concerns the applicants, with all the consequential implications for the level of the fine;
- in the alternative, annul or reduce the fine;
- order the Commission to pay the costs and associated expenses.

**Pleas in law and main arguments**

By Decision C(2007) 5910 final of 5 December 2007 in Case CONP/F/38629 — *Chloroprene rubber* ("CRr") — ('the Decision'), the Commission found Polimeri Europa and Eni jointly and severally liable, together with other undertakings, for breach of Article 81 EC, by having (i) agreed to share and fix markets, market shares and sales, (ii) fixed and increased prices for Chloroprene rubber, as well as set minimum prices, (iii) shared customers and (iv) exchanged restricted commercial information.

In support of their action challenging that decision, Polimeri Europa and Eni allege that the Decision is vitiated by the following substantive defects:

- Breach of Article 81 EC and failure to state reasons for the wrongful imputation to Eni of liability for the acts of a subsidiary company. It is submitted in this regard that the liability of the parent company cannot be established solely on the basis of its ownership of 100 % of the share capital and that the defendant failed correctly to assess the evidence which demonstrated the *de facto* independence of the subsidiaries vis-à-vis their parent company.

- Inconsistency with the letter closing the procedure against the undertaking responsible, until 1 January 2002, for the CR business, Syndial S.p.A. ('Syndial'), and infringement of the rights of the defence.
- Breach of Article 81 EC and lack of an adequate statement of reasons by virtue of the erroneous attribution to Polimeri Europa of liability for facts relating to a period during which another company (and not Polimeri Europa) was managing the CR business.
- Insufficiency and inconsistency in the statement of reasons, lack of a proper preliminary investigation and breach of Article 81 EC in regard to the appraisal of the facts and evidence.
- Insufficiency and inconsistency in the statement of reasons in the Decision, lack of a proper preliminary investigation and breach of Article 81 EC as regards the evaluation of the breach as a single and continuous infringement.
- Erroneous calculation of the duration of the infringement in the light of the evidence available.

The applicants then allege that the fine imposed on them is unlawful as being contrary to Article 81 EC and Article 23 of Regulation (EC) No 1/2003, as well as being at variance with the *Guidelines for the calculation of fines*.

It is argued in that regard that there was both an infringement of the principle of proportionality by the increases imposed for repeat offending and purposes of deterrence and an insufficient statement of reasons for refusing to give credit for the mitigating circumstances, in relation to the passive or minor role played in the infringement, to the limited participation in the unlawful conduct, to the cessation of such participation and to the failure to implement the agreements. Polimeri Europa and Eni also complain of the failure to take account of the cooperation provided by Syndial and Polimeri Europa for the purpose of reducing the fine in accordance with the abovementioned *Guidelines*.

The applicants plead, finally, a breach of Article 81 EC and of the *Commission Notice on immunity from fines and reduction of fines in cartel cases* by the Commission's erroneous assessment of the value of the evidence provided by Syndial and Polimeri Europa and its refusal to grant a reduction in the fine in accordance with that Notice.

**Order of the Court of First Instance of 1 February 2008 — Nomura Principal Investment and Nomura v Commission**

(Case T-430/04) <sup>(1)</sup>

(2008/C 92/89)

*Language of the case: English*

The President of the Court of First Instance (Fifth Chamber) has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 31, 5.2.2005.