Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Commission to pay the costs.*

(1) OJ C 223, 26.9.2009.

Judgment of the Court (Second Chamber) of 8 December 2011 — KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfimétaux SA, KME Italy SpA, formerly Europa Metalli SpA v European Commission

(Case C-272/09 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — Market for copper industrial tubes — Fines — Size of the market, duration of the infringement and cooperation capable of being taken into consideration — Effective judicial remedy)

(2012/C 32/06)

Language of the case: English

Parties

Appellants: KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfimétaux SA, KME Italy SpA, formerly Europa Metalli SpA (represented by: M. Siragusa, avvocato, A. Winckler, avocat, G. Rizza, avvocato, T. Graf, advokat, M. Piergiovanni, avvocato)

Other party to the proceedings: European Commission (represented by: E. Gippini Fournier and J. Bourke, acting as Agents, C. Thomas, Solicitor)

Re:

Appeal against the judgment of the Court of First Instance (Eighth Chamber) of 6 May 2009 in Case T-127/04 *KME Germany and Others* v *Commission,* in which the Court dismissed an action seeking reduction of the fine imposed on the applicants by Commission Decision 2004/421/EC of 16 December 2003, relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/38.240 — Industrial tubes) (OJ 2004 L 125, p. 50) — Price-fixing and market-sharing — Actual impact on the market — Guidelines for calculating the amount of fines

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders KME Germany AG, KME France SAS and KME Italy SpA to pay the costs.*

(1) OJ C 220, 12.9.2009.

Judgment of the Court (First Chamber) of 1 December 2011 (references for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen, Court of Appeal (England and Wales) (Civil Division) — Belgium, United Kingdom) — Koninklijke Philips Electronics NV v Lucheng Meijing Industrial Company Ltd, Far East Sourcing Ltd, Röhlig Hong Kong Ltd, Röhlig Belgium NV (C-446/09), Nokia Corporation v Her Majesty's Commissioners of Revenue and Customs (C-495/09)

(Joined Cases C-446/09 and C-495/09) (1)

(Common commercial policy — Combating the entry into the European Union of counterfeit and pirated goods — Regulations (EC) No 3295/94 and No 1383/2003 — Customs warehousing and external transit of goods from non-member States which constitute imitations or copies of goods protected in the European Union by intellectual property rights — Action by the authorities of the Member States — Conditions)

(2012/C 32/07)

Language of the case: Dutch and English

Referring courts

Rechtbank van eerste aanleg te Antwerpen, Court of Appeal (England and Wales) (Civil Division)

Parties to the main proceedings

Applicants: Koninklijke Philips Electronics NV (C-446/09), Nokia Corporation (C-495/09)

Defendants: Lucheng Meijing Industrial Company Ltd, Far East Sourcing Ltd, Röhlig Hong Kong Ltd, Röhlig Belgium NV (C-446/09), Her Majesty's Commissioners of Revenue and Customs (C-495/09)

In the presence of: International Trademark Association

Re:

(C-446/09)

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Antwerpen — Interpretation of Article 6(2)(b) of Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods (OJ 1994 L 341, p. 8) — Release for free circulation and entry for a suspensive procedure — Applicable law — Goods originating in a non-member country — Infringement of the holder's intellectual-property rights

(C-495/09)

Reference for a preliminary ruling — Court of Appeal (England and Wales) (Civil Division) — Interpretation of Article 2(1)(a) of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of

infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ 2003 L 196, p. 7) — Definition of 'counterfeit goods' — Goods bearing a Community trade mark in transit from a non Member State where they were manufactured and intended for the market of another non Member State — 'Nokia' mobile telephones

Operative part of the judgment

Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights, as amended by Council Regulation (EC) No 241/1999 of 25 January 1999, and Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights must be interpreted as meaning that:

— *goods coming from a non-member State which are imitations of goods protected in the European Union by a trade mark right or copies of goods protected in the European Union by copyright, a related right or a design cannot be classified as 'counterfeit goods' or 'pirated goods' within the meaning of those regulations merely on the basis of the fact that they are brought into the customs territory of the European Union under a suspensive procedure;*

— *those goods may, on the other hand, infringe the right in question and therefore be classified as 'counterfeit goods' or 'pirated goods' where it is proven that they are intended to be put on sale in the European Union, such proof being provided, inter alia, where it turns that the goods have been sold to a customer in the European Union or offered for sale or advertised to consumers in the European Union, or where it is apparent from documents or correspondence concerning the goods that their diversion to European Union consumers is envisaged;*

— *in order that the authority competent to take a substantive decision may profitably examine whether such proof and the other elements constituting an infringement of the intellectual property right relied upon exist, the customs authority to which an application for action is made must, as soon as there are indications before it giving grounds for suspecting that such an infringement exists, suspend the release of or detain those goods; and*

— *those indications may include, inter alia, the fact that the destination of the goods is not declared whereas the suspensive procedure requested requires such a declaration, the lack of precise or reliable information as to the identity or address of the manufacturer or consignor of the goods, a lack of cooperation with the customs authorities or the discovery of documents or correspondence concerning the goods in question suggesting that there is liable to be a diversion of those goods to European Union consumers.*

([1]) OJ C 24, 30.1.2010.
OJ C 37, 13.2.2010.

Judgment of the Court (Fourth Chamber) of 1 December 2011 (reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Systeme Helmholz GmbH v Hauptzollamt Nürnberg

(Case C-79/10) ([1])

(Directive 2003/96/EC — Taxation of energy products and electricity — Article 14(1)(b) — Exemption of energy products used as fuel for the purpose of air navigation — Use of an aircraft for other than commercial purposes — Scope)

(2012/C 32/08)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Systeme Helmholz GmbH

Defendant: Hauptzollamt Nürnberg

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Articles 11(3), 14(1)(b) and 15(1)(j) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) — Scope of the exemption from taxation provided for in respect of energy products supplied for use as fuel for the purposes of air navigation — National legislation restricting that exemption to air navigation by air carriers — Flights for business and private purposes made using an aircraft belonging to an undertaking which is not an air carrier

Operative part of the judgment

1. *Article 14(1)(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity must be interpreted as meaning that the tax exemption on fuel used for the purpose of air navigation, provided for under that provision, cannot apply in the case of a company, such as the applicant in the main proceedings, which, in order to develop its business, uses its own aircraft to transport members of its staff to clients or to trade fairs, in so far as that travel is not directly used for the supply, by that company, of air services for consideration.*