

3. The provision concerned infringes the principle of free movement of persons laid down in Articles 18 EC, 39 EC and 43 EC and Articles 28 and 31 of the EEA Agreement.

Appeal brought on 16 July 2009 by KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfinmétaux SA, KME Italy SpA, formerly Europa Metalli SpA against the judgment of the Court of First Instance (Eighth Chamber) delivered on 6 May 2009 in Case T-127/04: KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfinmétaux SA, KME Italy SpA, formerly Europa Metalli SpA v Commission of the European Communities

(Case C-272/09 P)

(2009/C 220/55)

Language of the case: English

Parties

Appellants: KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfinmétaux SA, KME Italy SpA, formerly Europa Metalli SpA (represented by: M. Siragusa, G. Rizza, M. Piergiorganni, avvocati, A. Winckler, avocat, T. Graf, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellants claim that the Court should:

- set aside the Judgment,
- to the extent that it is possible, based on the facts before the Court, partially annul the Decision and reduce the amount of KME's Fine, and
- order the Commission to pay the costs of these proceedings and of the proceedings before the Court of First Instance.

or, in alternative, where the state of the proceedings does not so permit,

- set aside the Judgment (including with respect to the CFI's order to KME to pay the costs) and refer the case back to the CFI.

Pleas in law and main arguments

By their first plea, the Appellants criticize the CFI for holding that the Commission demonstrated to a sufficient legal standard that the Level Wound Coils Arrangements had an impact on the relevant market and that, therefore, the Starting Amount of KME's Fine had to take such factor into account. In so reasoning and deciding to reject the first plea of KME's Application, the CFI infringed Community law and provided an

illogical and inadequate statement of reasons. Furthermore, the CFI manifestly distorted the facts and evidence put before it by upholding the Commission's conclusion that the economic evidence provided by KME did not show that the infringement as a whole did not have any market impact.

By their second plea, the Appellants criticize the CFI for approving the Commission's reference — in order to determine the size of the market affected by the infringement, for the purpose of establishing the gravity element of KME's Fine — to a market value that wrongly included the revenues from sales made in a separate upstream market from the 'cartelized' one, despite the fact that the cartel members were not vertically integrated in that upstream market. In so reasoning and deciding to reject the second plea of KME's Application, the CFI violated Community law and provided an inadequate statement of reasons.

By their third plea, the Appellants criticize the CFI for rejecting the third plea of the Application, according to which the Commission misapplied the 1998 Fining Guidelines and infringed the principles of proportionality and equal treatment by imposing the maximum percentage increase in the starting amount of KME's Fine on account of duration. In the Appellants' view, the CFI infringed Community law and provided an obscure, illogical and inadequate statement of reasons by upholding the relevant part of the Decision.

By their fourth plea, the Appellants claim that the CFI violated Community law by rejecting the fourth limb of the Application's fourth plea and upholding the relevant part of the Decision, in which the Commission denied KME the benefit of a fine reduction on account of its cooperation outside the scope of the 1996 Leniency Notice, in violation of the 1998 Fining Guidelines as well as the principles of fairness and equal treatment.

By their fifth and last plea, the Appellants claim that the CFI violated Community law and the Appellants' fundamental right to full and effective judicial review by failing to examine thoroughly and closely KME's arguments and showing a biased deference to the Commission's discretion.

Reference for a preliminary ruling from the Tribunal de grande instance, Paris (France) lodged on 16 July 2009 — Olivier Martinez, Robert Martinez v Société MGN Limited

(Case C-278/09)

(2009/C 220/56)

Language of the case: French

Referring court

Tribunal de grande Instance, Paris