



Reports of Cases

Case T-68/09

Soliver NV
v
European Commission

(Competition — Agreements, decisions and concerted practices — European market in carglass — Decision finding an infringement of Article 81 EC — Market-sharing agreements and exchanges of commercially sensitive information — Regulation (EC) No 1/2003 — Single and continuous infringement — Participation in the infringement)

Summary — Judgment of the General Court (Second Chamber), 10 October 2014

1. *EU law — Principles — Fundamental rights — Presumption of innocence — Procedures in competition matters — Applicability — Degree of probative value required for the evidence on which the Commission relies*

(Art. 81(1) EC; Charter of Fundamental Rights of the European Union, Art. 48(1); Council Regulation No 1/2003, Art. 2)

2. *Agreements, decisions and concerted practices — Agreements and concerted practices constituting a single infringement — Undertakings that may be held responsible for participating in an overall cartel — Criteria — Burden of proof*

(Art. 81(1) EC)

3. *Agreements, decisions and concerted practices — Adverse effect on competition — Criteria for assessment — Anti-competitive object — Sufficient — Conduct of an undertaking which participated in certain contacts of an anti-competitive nature but did not participate in any meeting of the cartel — Circumstances not enabling its participation in the overall cartel to be established*

(Art. 81(1) EC)

4. *Actions for annulment — Judgment annulling a measure — Scope — Partial annulment of an EU legal measure — Conditions — Annulment, in its entirety, of a Commission decision qualifying an overall cartel as a single and continuous infringement and imposing a fine, despite the participation of the applicant undertaking in certain contacts of an anti-competitive nature — Decision not enabling that undertaking to understand the complaints upheld against it concerning those contacts, independently of its participation in the signed and continuous infringement*

(Art. 81(1) EC; Art. 264, first para., TFEU)

1. See the text of the decision.

(see paras 57-59)

2. See the text of the decision.

(see paras 60-65, 101, 105)

3. See the text of the decision.

(see para. 76)

4. The first paragraph of Article 264 TFEU is to be interpreted as meaning that the measure contested by the action for annulment must be declared to be void only to the extent that the action is well founded. The mere fact that the Court finds that a plea relied on in support of an action for annulment is well founded does not automatically enable it to annul the contested measure in its entirety. The measure may not be annulled in its entirety where it is obvious that, being directed only at a specific part of the contested measure, that plea can provide a basis only for partial annulment.

Accordingly, if an undertaking has directly taken part in one or more of the forms of anti-competitive conduct comprising a single and continuous infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other offending conduct planned or put into effect by those other participants in pursuit of the same objectives, or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it had participated directly and for the conduct planned or put into effect by the other participants, in pursuit of the same objectives as those pursued by the undertaking itself, where it has been shown that the undertaking was aware of that conduct or was able reasonably to foresee it and prepared to take the risk. That cannot, however, relieve the undertaking of liability for conduct in which its participation is established or for conduct for which it can in fact be held responsible.

However, a Commission decision categorising an overall cartel as a single and continuous infringement can be divided in that manner only if the undertaking in question has been put in a position, during the administrative procedure, to understand that it is alleged, not only to have participated in that infringement, but also to have engaged in certain forms of conduct comprising that infringement, hence to defend itself on that point, and only if the decision is sufficiently clear in that regard.

That is not the case where the decision in question does not independently qualify that conduct as an infringement of Article 101 TFEU, the EU judicature not being able, in such circumstances, to carry out such a qualification itself without encroaching on the powers conferred on the Commission by Article 105 TFEU.

(see paras 108-113)