

Action brought on 10 April 2009 — MRI v Commission**(Case T-154/09)**

(2009/C 141/111)

*Language of the case: Italian***Parties**

Applicant: Manuli Rubber Industries SpA (MRI) (Milan, Italy) (represented by: L. Radicati di Brozolo, lawyer, M. Pappalardo, lawyer, and E. Marasà, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court of First Instance should:

- annul Article 1 of the Decision in so far as it states that the applicant participated in a single and continuous infringement in the marine hose sector from 1 April 1986 until 1 August 1992 and from 3 September 1996 until 2 May 2007, in particular during the period from 3 September 1996 to 9 May 2000;
 - annul Article 2 of the Decision in so far as a fine in the amount of EUR 4 900 000 is imposed on the applicant as a result of the errors set out in the present application;
 - reject any objection or defence put forward to the contrary;
- or, in the lesser alternative:
- reduce, in accordance with Article 229 EC, the fine of EUR 4 900 000 to be imposed on the applicant under Article 2 of the Decision;
- and, in any event:
- order the Commission to pay the costs of the present proceedings.

Pleas in law and main arguments

The Decision contested in the present case ('the contested decision') is the same as that contested in Case T-146/09 *Parker ITR and Parker Hannifin v Commission*.

In support of its claims, the applicant submits first that the contested decision is vitiated as regards the categorisation of the infringement imputed to the applicant as participation in a single and continuous cartel agreement from 1986 to 2007, and in particular as regards the imputation of the infringement during the period from 1996 to 2000, and the inclusion of the period from September 1996 to May 1997 in the period in respect of which the penalty was imposed.

It is submitted in that regard that an infringement cannot be either continuous or repeated when the individual infringement episodes are interspersed, as in the present case, with intervals of considerable length and, above all, with positive events which are incompatible with a desire to continue or to repeat the infringement, such as the applicant's public and explicit breaking-off of relations with the cartel, which even the Commission acknowledged.

The applicant also submits that the amount of the fine was improperly determined, particularly as regards the duration, the gravity of the infringement and the reduction due for participation in the leniency programme.

Appeal brought on 20 April 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal of 18 February 2009 in Case F-42/08, Marcuccio v Commission**(Case T-157/09 P)**

(2009/C 141/112)

*Language of the case: Italian***Parties**

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

The appellant claims that the Court of First Instance should:

- set aside in its entirety, without any exception whatsoever, the order of the Civil Service Tribunal (First Chamber) of 18 February 2009 in Case F-42/08 *Marcuccio v Commission*;
 - declare that the action brought before the Civil Service Tribunal in respect of which the order under appeal was made was perfectly admissible, and:
 - grant in their entirety, without any exception whatsoever, the forms of order sought by the appellant before the Civil Service Tribunal which, for all legal intents and purposes, are to be deemed to be reproduced in the present application;
 - order the Commission to repay the appellant all costs, fees and other expenses incurred by the latter in connection with the proceedings before the Civil Service Tribunal, together with the costs incurred by the appellant in the present appeal proceedings;
- or, in the lesser alternative:
- refer the case back to the Civil Service Tribunal for a decision on the merits, to be taken by that Tribunal sitting in a different formation.

Pleas in law and main arguments

The present appeal has been brought against the order of the Civil Service Tribunal of 18 February 2009 dismissing as manifestly inadmissible the action brought by the appellant for compensation for the damage which he purportedly suffered as a result of the fact that the Commission sent a note intended for him to a fax number which was not at his disposal.