

Action brought on 5 October 2009 — Donau Chemie v Commission

(Case T-406/09)

(2009/C 312/53)

*Language of the case: German***Parties***Applicant:* Donau Chemie AG (Vienna, Austria) (represented by: S. Polster, W. Brugger and M. Brodey, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

— Annul Article 2 of the contested Commission Decision C (2009) 5791 final of 22 July 2009 in Case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel and gas industries, in so far as it concerns the applicant;

— in the alternative, reduce noticeably and appropriately the amount of the fine imposed on the applicant by the Commission in the decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C (2009) 5791 final of 22 July 2009 in case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel and gas industry. The contested decision imposed a fine on the applicant and on other undertakings for infringement of Article 81 EC and Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a single and continuous infringement in the calcium carbide and magnesium sector in the EEA, except in Spain, Portugal, Ireland and the United Kingdom, which consisted in market sharing, agreements on quotas, customer allocations, price fixing and exchange of sensitive information relating to prices, customers and sales volumes.

In support of its action, the applicant alleges infringement of the EC Treaty and of the rules concerning its application and submits, in particular, the following pleas in law:

— Unlawful assessment of the basic amount of the fine as well as the additional amount to be determined pursuant to Paragraph 25 of the Guidelines on setting fines; ⁽¹⁾

— unlawful failure to take into consideration mitigating circumstances in determining the fine;

— unlawful application of the Commission notice on immunity from fines, ⁽²⁾ since the level of reduction of the fine from which the applicant benefited on the ground of evidence provided by it was too low;

— infringement of the principles of equal treatment and proportionality in respect of determining the fine;

— unlawful failure to consider a reduction of the fine to take account, in accordance with Paragraph 35 of the Guidelines on setting fines, of the undertaking's inability to pay and/or, in accordance with Paragraph 37 of the Guidelines on setting fines, the particularities of the given case;

— infringement of Article 253 EC on the grounds of failure to state the reasons for the contested decision.

⁽¹⁾ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

⁽²⁾ Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 9 October 2009 — Neubrandenburger Wohnungsgesellschaft v Commission

(Case T-407/09)

(2009/C 312/54)

*Language of the case: German***Parties***Applicant:* Neubrandenburger Wohnungsgesellschaft mbH (Neubrandenburg, Germany) (represented by: M. Núñez Müller and J. Dammann, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

— Annul Commission Decision D/53320 of 29 July 2009;

— in the alternative, declare that the Commission failed to initiate the formal investigation procedure under Article 88(2) EC, in infringement of its duties under Article 88 EC and Regulation (EC) No 659/1999;

— order the Commission to pay the cost of the proceedings.