

Questions referred

1. What is the scope of Regulation (EEC) No 822/87, ⁽¹⁾ that is to say, its spatial and temporal application, and the purpose thereof as regards penalties, with respect to the 1993/94 wine year, the period to which the case at issue relates?
2. Is it true that Article 39 of Regulation (EEC) No 822/87 was implemented, in respect of the 1993/94 wine year, by Regulation (EEC) No 343/94 ⁽²⁾ of 15 February 1994 and replaced with that regulation?
3. Is the application of the fine of LIT 390 250 000 (now EUR 201 547,30 — two hundred and one thousand five hundred and forty seven point 30 euros) for failure to deliver for compulsory distillation — in respect of the 1993/94 wine year — 7 084,87 hl of table wine, that volume having been calculated by applying the compulsory distillation quota to the lees produced (15 155 hl) (the yield being 126 hl/ha and the compulsory distillation quota being 51.5 %, in accordance with Regulation (EEC) No 610/94) ⁽³⁾ disproportionate in effect to the offences and in breach of the principle of fair punishment, which has been set out many times by the Court of Justice?

⁽¹⁾ OJ 1987 L 84, p. 1.

⁽²⁾ OJ 1987 L 44, p. 9.

⁽³⁾ OJ 1994 L 77, p. 12.

Appeal brought on 19 November 2010 by Deltafina SpA against the judgment of the General Court (Fourth Chamber) delivered on 8 September 2010 in Case T-29/05 Deltafina v Commission

(Case C-537/10 P)

(2011/C 13/41)

Language of the case: Italian

Parties

Appellant: Deltafina SpA (represented by: J.-F. Bellis and F. Di Gianni, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- vary the judgment under appeal in so far as it upholds the fine imposed on Deltafina, by annulling or, alternatively, reducing the fine imposed on Deltafina;
- annul the contested decision in so far as it imposes a fine on Deltafina or, alternatively, reduce the fine imposed on Deltafina;
- order the Commission to pay the costs of the proceedings, including those incurred before the General Court.

Pleas in law and main arguments

In support of its appeal, the appellant relies on two grounds:

1. the first ground of appeal, raised by way of principal claim, alleging that the General Court disregarded the principle of equal treatment, in failing to consider adequately the appellant's plea relating to the infringement of the principle of equal treatment in the computation of the fine imposed;

in support of that ground of appeal, the appellant submits that the Commission applied the highest starting amount of the fine to Deltafina, on the basis that Deltafina was the main purchaser of Spanish processed tobacco. By contrast, the fine imposed on the other undertakings involved in the infringement (including Deltafina's sister company, Taes) was determined solely on the basis of their position on the Spanish raw tobacco market, that is to say, the market in which the infringement had occurred. The fine imposed on Deltafina breaches the principle of equal treatment, since Cetarsa and the undertakings Dimon/Agroexpansión and Standard/WWTE were also vertically integrated undertakings and held prominent positions on the Spanish processed tobacco market. This was not, however, taken into consideration when determining their respective fines. Thus, in determining the fine imposed on Deltafina, the Commission had regard to a factor which was not used in relation to the other undertakings;

2. the second ground of appeal, in the alternative, alleging that the General Court misapplied the concept of 'undertaking' in Article 81 EC, in rejecting, by means of contradictory and erroneous reasoning, the appellant's plea in law alleging the failure to apply to Deltafina the same reduction in fine granted to the sister company Taes following the joint application for leniency submitted by Taes and Deltafina under the auspices of their parent company, Universal.

In support of that ground of appeal, the appellant submits that the General Court misapplied the concept of 'undertaking' in Article 81 EC, departing from the case-law of the Court of Justice and the General Court in the matter, in particular that resulting from Case C-97/08 P *Akzo Nobel and Others v Commission* [2009] ECR I-8237. The Commission Notice on the non-imposition or reduction of fines in cartel cases of 1996 (OJ 1996 C 207, p. 4) ought to have been applied to the undertaking Taes/Deltafina as a whole, and not to the two companies separately, since that notice applies to 'undertakings' and not to individual legal entities. Lastly, the appellant submits that the arguments put forward by the Commission with the aim of denying Deltafina the benefit of the reduction in fine granted to Taes are unfounded. The appellant submits that, in the light of such arguments, Deltafina and Taes constituted a single undertaking and, therefore, Deltafina ought to have received the same reduction in fine granted to Taes.