



Reports of Cases

Case T-27/10

AC-Treuhand AG
v
European Commission

(Competition — Agreements, decisions and concerted practices — Markets in tin heat stabilisers and ESBO/esters heat stabilisers — Decision finding two infringements of Article 81 EC and Article 53 of the EEA Agreement — Consultancy firm not operating on the relevant markets — Fines — Action for annulment — Concept of undertaking — Principle that offences and penalties must be defined by law — Duration of the infringement — Limitation — Duration of the administrative procedure — Reasonable time — Rights of the defence — Late notification of the investigation procedure — Maximum amount of 10% of turnover — Penalising of two infringements in a single decision — Concept of single infringement — Application for variation — Amount of the fines — Duration of the infringements — Duration of the administrative procedure — 2006 Guidelines on the method of setting fines — Value of sales — Symbolic fine — Unlimited jurisdiction)

Summary — Judgment of the General Court (Third Chamber), 6 February 2014

1. *Agreements, decisions and concerted practices — Imputation to an undertaking — Commission decision finding the coresponsibility of a consultancy firm not active in the market concerned but having actively and deliberately contributed to the cartel — No infringement of Article 81 EC or the principle that offences and penalties must be defined by law*

(Art. 81(1) EC)

2. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement and its duration on the Commission — Extent of the burden of proof — Degree of precision required of the evidence used by the Commission — Body of evidence — Evidential obligations of undertakings disputing the reality or duration of the infringement*

(Art. 81 EC; Council Regulation No 1/2003, Art. 2)

3. *Competition — Administrative procedure — Observance of the rights of the defence — Duty to act within a reasonable time — No obligation on the Commission to warn the undertakings concerned by an investigation of the possibility of the adoption of inquiry measures or prosecution before any statement of objections sent*

(Art. 81 EC; Charter of Fundamental Rights of the European Union, Art. 41(1); Council Regulation No 1/2003)

4. *Competition — Administrative procedure — Obligations of the Commission — Duty to act within a reasonable time — Annulment of the decision finding an infringement by reason of excessive duration of the procedure — Condition — Harm to the rights of defence of the undertakings concerned — Impact of the excessive duration of the procedure on the content of the Commission decision — None*

(Art. 81 EC; Charter of Fundamental Rights of the European Union, Art. 41(1); Council Regulation No 1/2003)

5. *Agreements, decisions and concerted practices — Agreements and concerted practices constituting a single infringement — Concept — Criteria — Single objective and overall plan — Links of complementarity between the agreements*

(Art. 81(1) EC)

6. *Competition — Fines — Amount — Determination — Legal context — Guidelines adopted by the Commission — Discretion of the Commission — Judicial review — Unlimited jurisdiction of the General Court*

(Arts 261 TFEU and 263 TFEU; Council Regulation No 1/2003, Arts 23(2) and 31; Commission Notice 2006/C 210/02, points 9 to 13, 36 and 37)

1. See the text of the decision.

(see paras 43-46)

2. See the text of the decision.

(see paras 55-64, 75, 88-92, 124, 135, 147-151, 159, 162)

3. See the text of the decision.

(see paras 170-178, 184-191)

4. See the text of the decision.

(see paras 203-211, 215-220, 277-283)

5. In competition matters, the notion of a single infringement covers a situation in which several undertakings participated in an infringement in which continuous conduct in pursuit of a single economic aim was intended to distort competition, and also individual infringements linked to one another by the same object (all the elements sharing the same purpose) and the same subjects (the same undertakings, who are aware that they are participating in the common object). An infringement of Article 81(1) EC may result not only from an isolated act but also from a series of acts or from continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute, in themselves and in isolation, an infringement of that provision. When the different actions form part of an overall plan because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.

The concept of a single objective cannot be determined by a general reference to the distortion of competition on the market concerned by the infringement, since an impact on competition, as object or effect, constitutes an essential element of any conduct covered by Article 81(1) EC. Thus, for the

purposes of characterising various instances of conduct as a single and continuous infringement, it is necessary to establish whether they are complementary, in that each of them is intended to deal with one or more consequences of the normal pattern of competition, and whether, through interaction, they contribute to the attainment of the set of anti-competitive effects desired by those responsible, within the framework of an overall plan having a single objective. In that regard, it will be necessary to take into account any circumstance capable of establishing or of casting doubt on that link, such as the period of implementation, the content and, correlatively, the objective of the various unlawful actions in question.

The existence of different, albeit neighbouring, product markets is a relevant criterion for the purposes of determining the scope and therefore the identity of infringements of Article 81 EC. However, the fact that the two cartels may have related to two different product markets does not necessarily preclude the possibility that they were covered by the same overall plan, provided that the existence between them of links of complementarity, in terms of conditionality or coordination, can be established.

Describing certain unlawful acts as constituting one and the same infringement or as a number of separate infringements is not, in principle, without consequence as regards the penalty that may be imposed, since a finding that a number of separate infringements have been committed may lead to the imposition of several separate fines, each time within the limits laid down in Article 23(2) of Regulation No 1/2003 and thus within the upper limit of 10% of turnover in the business year preceding the adoption of the decision.

(see paras 230, 238-241, 249, 255)

6. See the text of the decision.

(see paras 286-314)