In support of its action, the applicant has submitted three pleas in law.

By way of the first plea in law, the applicant submits that the Commission wrongly assumed that the legal predecessor of the applicant had decisive influence over the relevant undertakings. The applicant submits in this respect that the contested decision is based on wrong findings of fact and a wrong application of the legal provisions regarding imputation, especially the conditions for the assumption that there was decisive influence.

By way of a second plea in law, the applicant submits that the Commission's right to impose a fine on the applicants pursuant to Article 25(1) and (5) of Regulation (EC) No 1/2003 [1] had become time-barred. In this respect, the applicant explains that the Commission has not shown that the relevant undertakings committed an infringement after 1996/1997 and in 1999 and 2000, respectively. Further, the applicant submits that the fact that the Commission suspended the procedure because of the proceedings in Joined Cases T-125/03 and T-253/03 *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* did not lead to a suspension of the period of limitations in respect of the applicant.

Finally, in the third plea, the applicant criticises an infringement of its rights of defence. In this respect, the applicant claims that the Commission suspended the investigation for no reason for more than four years, with the result that the investigation had been running for approximately five years before the applicant was informed and approximately six years before a statement of objections was notified to the applicant. In addition, the Commission failed to investigate the persons involved in the offence and the business unit concerned in order to make a comprehensive finding of the facts of the case. According to the applicant the Commission's failure deprived it of the opportunity to secure exculpatory evidence and to properly defend its case.

[1] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p.1)

Action brought on 28 January 2010 — Faci v Commission

(Case T-46/10)

(2010/C 100/79)

Language of the case: English

Parties

Applicant: Faci SpA (Milano, Italy) (represented by: S. Piccardo, S. Crosby and S. Santoro, lawyers)

Defendant: European Commission

Form of order sought

- to annul the contested decision in so far as it finds that the Applicant colluded to fix prices, allocate markets through sales quotas and allocate customers;
- to annul, or to substantially reduce the fine imposed on the Applicant;
- to annul the decision in so far as it grants a reduction of the fine originally calculated for Bärlocher or to substantiallv reduce the reduction granted;
- to order the Commission to pay the Applicant's costs.

Pleas in law and main arguments

The Applicant seeks the annulment of the Commission Decision of 11 November 2009 (Case No. COMP/38.589 — Heat Stabilisers) in so far as the Commission found the Applicant liable for an infringement of Article 8l EC (now Article 101 TFEU) and Article 53 EEA by colluding to fix prices, allocating markets through sales quotas and allocating customers in the ESBO/esters sector. Alternatively, the Applicant seeks a substantial reduction of the fine imposed upon it.

In support of its application the Applicant claims that the Commission violated general principles of law, committed manifest errors of assessment, infringed the principles of good administration and equal treatment, acted without competence or infringed the principle of undistorted competition, infringed the obligation to state reasons and misapplied the 2006 Fining Guidelines. The applicant puts forward five pleas in law:

- The Commission made a manifest error of assessment by attaching too little weight to the evidence prior to the Applicant's participation in the cartel, whilst attaching too much weight to the other evidence. As a result, the significance of the fact that a fully operative hard core cartel involving price fixing, market allocation, customer allocation, injurious pricing and even collusive bribery, had been terminated before the Applicant's participation began, was not properly assessed when calculating the gravity of the offence committed by the Applicant.

— The Commission infringed the principle of equal treatment by treating the Applicant similarly to other undertakings, whereas the comparable gravity of its offence warranted substantially different treatment. The Commission imposed a differential of a mere 1 % of the value of sales in the market to be taken into account when setting the fine, despite the fact that the Applicant committed fewer offences and that none of them were hard core in nature and despite a finding of non-implementation by the Applicant. Furthermore, the Commission infringed the prohibition on discrimination by failing to inform the applicant that it was subject to investigation until much later than the other undertakings, thereby causing it prejudice.

— The Commission infringed the principle of good administration with regard to the unreasonable duration of the administrative proceedings and its suspension of the proceedings to deal with an interlocutory matter. The principle of equal treatment was infringed as the Commission's actions were unfairly prejudicial to the Applicant who, as a result, should have received a reduction in fine substantially greater than the 1 % received.

— The Applicant challenges the reduction in fine (in excess of 95 %) granted to Bärlocher, which is an actual or potential competitor of the Applicant, on the grounds of lack of competence, infringement of the principle of equal treatment in the broad sense and of the duty to state reasons. In the Applicant's view, the reduction in fine amounts to a subsidy, likely to lead to a distortion of competition. In addition, or in the alternative, the reasons for the reduction were not disclosed by the Commission in the version of the Decision notified to the Applicant, amounting to a breach of the duty to state reasons.

— The fine imposed on it infringed the 2006 Fining Guidelines and attendant principles. When setting the fine, the Commission did not take proper account of the fact that the Applicant had not engaged in hard core cartel offences, unlike the other undertakings, and that it had demonstrated competitive behaviour on the relevant market throughout. The gravity of the Applicant's infringement was mistakenly assessed by incorrectly imputing anticompetitive behaviour to it. In addition, the Commission failed to assess the actual role Faci played, failed to take account of the Applicant's limited size, limited market power and inability to damage competition in comparison to the other undertakings and failed to rectify this by reference to point 37 of the 2006 Fining Guidelines, so as to apply them lawfully.

Action brought on 27 January 2010 — Akzo Nobel e.a. v Commission

(Case T-47/10)

(2010/C 100/80)

Language of the case: English

Parties

Applicants: Akzo Nobel NV (Amsterdam, Netherlands), Akzo Nobel Chemicals GmbH (Düren, Germany), Akzo Nobel Chemicals B.V. (Amersfoort, Netherlands), Akcros Chemicals Ltd (Stratford-upon-Avon, United Kingdom) (represented by: C. Swaak, and Marc van der Woude, lawyers)

Defendant: European Commission

Form of order sought

— to annul Articles 1 (1) and (2) of the contested decision in whole or in part, and/or

— reduce the fines imposed by Articles 2 (1) and (2) of the contested decision, and/or

— declare that Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. cannot be held liable for the infringements before 1993, that Akzo Nobel N.V. cannot be held liable for the infringement for the period between 1987 to 1998, neither individually nor jointly with undertakings belonging to the Elementis group;

— condemn the Commission to costs of the proceedings.

Pleas in law and main arguments

The applicants seek the annulment of the Commission Decision of 11 November 2009 (Case No COMP/38.589 — Heat Stabilisers) in so far as the Commission found the applicants liable for an infringement of Article 8l EC (now Article 101 TFEU) and Article 53 EEA by colluding to fix prices, allocating markets through sales quotas, allocating customers and exchanging commercially sensitive information in particular on customers, production and sales in the tin stabilisers sector. Alternatively, the applicants seek a substantial reduction of the fine imposed upon it.