

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant contests Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. In the contested decision, fines were imposed on the applicant and on other undertakings on account of infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

The applicant puts forward seven pleas in support of its action.

By its first plea, the applicant alleges breach of Article 101 TFEU and Article 53 of the EEA Agreement on the ground of the finding of a single, continuous and complex infringement. By that unlawful overall assessment the defendant failed to comply with its duty to carry out a legal assessment of the individual conduct of each of the undertakings to which the decision is addressed and unlawfully attributes conduct of third parties which is incapable of being attributed.

By its second plea, the applicant alleges, in the alternative, breach of the duty to state reasons pursuant to Article 296(2) TFEU, on account of the lack of an individualised statement of reasons for the contested decision.

By its third plea, the applicant claims that the contested decision should be annulled because the applicant did not participate in the alleged infringements on the relevant product and geographic markets concerned by the decision and because it has not been established that it engaged in a cartel infringement.

By its fourth plea, the applicant asserts that a fine has been unlawfully imposed jointly and severally on the applicant and its parent company. Such joint and several imposition infringes the principle *nulla poena sine lege* laid down in Article 49(1) of the Charter of Fundamental Rights of the European Union and the principle of the proportionality of the penalty to the offence, laid down in Article 49(3) of the Charter in conjunction with Article 48(1) thereof, and infringes Article 23 of Regulation (EC) No 1/2003.⁽¹⁾

By its fifth plea, the applicant claims that the amount of the fine was miscalculated. The applicant asserts in this respect that, in its calculation, the defendant included turnover of the applicant which from the outset could not be connected with the objections raised.

By its sixth plea, the applicant alleges that the excessive length of the procedure and the failure to take account thereof in the calculation of the fine amounts to a breach of Article 41 of the Charter of Fundamental Rights of the European Union.

By its seventh plea, the applicant alleges errors of assessment when the fine was calculated in the evaluation of the applicant's alleged involvement in the infringement. In this respect, the applicant states that, even on the assumption that an infringement of Article 101 TFEU did occur, as the Commission contends, the fine would be excessive and disproportionate. In the applicant's submission, the Commission infringed the principle of the proportionality of the penalty to the offence codified in Article 49(3) in conjunction with Article 48(1) of the Charter of Fundamental Rights of the European Union.

⁽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 8 September 2010 — Villeroy & Boch v Commission

(Case T-374/10)

(2010/C 301/62)

Language of the case: German

Parties

Applicant: Villeroy & Boch AG (Mettlach, Germany) (represented by: M. Klusmann, Solicitor and Professor S. Thomas)

Defendant: European Commission

Form of order sought

— annul the contested decision in so far as it concerns the applicant;

— in the alternative, reduce by an appropriate amount the fine imposed on the applicant in the contested decision;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant contests Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. In the contested decision, fines were imposed on the applicant and on other undertakings on account of infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

The applicant puts forward seven pleas in support of its action.

By its first plea, the applicant alleges breach of Article 101 TFEU and Article 53 of the EEA Agreement on the ground of the finding of a single, continuous and complex infringement. By that unlawful overall assessment the defendant failed to comply with its duty to carry out a legal assessment of the individual conduct of each of the undertakings to which the decision is addressed and unlawfully attributes conduct of third parties which is incapable of being attributed, in breach of the principle *nulla poena sine lege*.

By its second plea, the applicant alleges, in the alternative, breach of the duty to state reasons pursuant to Article 296(2) TFEU, on account of the lack of an individualised statement of reasons for the contested decision.

By its third plea, the applicant claims that the contested decision should be annulled because the applicant did not participate in the alleged infringements on the relevant product and geographic markets concerned by the decision and because it has not been established that it engaged in a cartel infringement.

By its fourth plea, the applicant asserts that a fine has been unlawfully imposed jointly and severally on the applicant and its subsidiaries in France, Belgium and Austria. Such joint and several imposition infringes the principle *nulla poena sine lege* laid down in Article 49(1) of the Charter of Fundamental Rights of the European Union and the principle of the proportionality of the penalty to the offence, laid down in Article 49(3) of the Charter in conjunction with Article 48(1) thereof, and infringes Article 23 of Regulation (EC) No 1/2003.⁽¹⁾

By its fifth plea, the applicant claims that the amount of the fine was miscalculated. The applicant asserts in this respect that, in its calculation, the defendant included turnover of the applicant which from the outset could not be connected with the objections raised.

By its sixth plea, the applicant alleges that the excessive length of the procedure and the failure to take account thereof in the calculation of the fine amounts to a breach of Article 41 of the Charter of Fundamental Rights of the European Union.

By its seventh plea, the applicant alleges errors of assessment when the fine was calculated in the evaluation of the applicant's alleged involvement in the infringement. In this respect, the applicant states that, even on the assumption that an infringement of Article 101 TFEU did occur, as the Commission contends, the fine would be excessive and disproportionate. In the applicant's submission, the Commission infringed the principle of the proportionality of the penalty to the offence codified in Article 49(3) in conjunction with Article 48(1) of the Charter of Fundamental Rights of the European Union. Furthermore, the Commission was not entitled in the present case to impose the maximum fine of 10 % of the group's turnover.

⁽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 (O) 2003 L 1, p. 1).

Action brought on 8 September 2010 — Hansa Metallwerke and Others v Commission

(Case T-375/10)

(2010/C 301/63)

Language of the case: German

Parties

Applicants: Hansa Metallwerke AG (Stuttgart, Germany), Hansa Nederland BV (Nijkerk, Netherlands), Hansa Italiana Srl (Castelnuovo del Garda, Italy), Hansa Belgium Sprl (Asse, Belgium), Hansa Austria GmbH (Salzburg, Austria) (represented by: H.-J. Hellmann, lawyer)

Defendant: European Commission

Form of order sought

- annul the Commission's decision of 23 June 2010, notified to the applicants on 30 June 2010, relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 — Bathroom fixtures and fittings) in so far as it concerns the applicants;
- in the alternative, reduce the applicants' fine;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicants contest Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. In the contested decision, fines were imposed on the applicants and on other undertakings on account of infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

In support of their action, the applicants claim, first, that the fine imposed on them unlawfully exceeds the maximum amount permitted under the second sentence of Article 23(2) of Regulation (EC) No 1/2003,⁽¹⁾ since the Commission incorrectly based its decision on Hansa Metallwerke AG's total worldwide turnover.

Second, the applicants allege breach of the principle of the protection of legitimate expectations. The applicants submit that the Commission committed serious procedural errors in the course of the administrative procedure and thereby placed the applicants at a disadvantage in relation to the other parties to the procedure. The Commission failed to take account of that circumstance in the contested decision, as it had promised to do during the procedure.