

Action brought on 6 September 2010 — Productos Derivados de Acero v Commission

(Case T-388/10)

(2010/C 301/73)

Language of the case: Spanish

Parties

Applicant: Productos Derivados de Acero, SA (Catarroja, Spain) (represented by: M.B. Escuder Tella, J. Viciano Pastor and F. Palau Ramirez, lawyers)

Defendant: European Commission

Form of order sought

- Annul the contested decision [C(2010) 4387 final] on the ground that the five-year limitation period prescribed in Article 25 of Regulation (EC) No 1/2003 in respect of the imposition of penalties has expired;
- in the alternative, in the event that the first claim does not succeed, annul the contested decision in so far as it finds that Productos Derivados de Acero, S.A (PRODERAC) participated in the restrictive agreements described in the contested decision and declare that that company did not participate in the collusive conduct as alleged;
- in the alternative, in the event that the second claim does not succeed either, annul the contested decision in so far as it reduces the fine imposed on Productos Derivados de Acero, S.A (PRODERAC) by only 25 % and declare PRODERAC exempt from the fine in application of the 2006 Guidelines on the method of setting fines on the ground that its inability to pay has been established;
- in the further alternative, in the event that the third claim also fails, annul the contested decision in so far as it reduces the fine imposed on Productos Derivados de Acero, S.A (PRODERAC) by only 25 % and declare the fine to be reduced by 75 %;
- order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision in these proceedings is the same as in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.

In support of its action, the applicant advances the following pleas in law:

1. Preliminary issue: limitation period for the imposition of penalties. It is maintained in this regard that the limitation period for the imposition of penalties in respect of anti-competitive conduct expires five years from the last action

taken for the purpose of the proceedings and that between the end date of the cartel, 19 September 2002, and the notification of the statement of objections, 30 September 2008, the limitation period was not interrupted.

2. Misapplication of Article 101 TFEU, Article 53 of the EEA Agreement and of the case-law of the Community Courts concerning those provisions, in so far as:
 - the applicant gave no express indication of its intention to participate in the agreements and concerted practices, nor can any such intention be implicitly inferred from any other circumstances;
 - the applicant clearly and publicly distanced itself from the collusive agreements inasmuch as its participation in meetings had no impact on its commercial conduct. In that regard, the failure to implement the collusive agreements is proof that the applicant's participation in meetings did not influence its market conduct.
3. Misapplication of point 35 of the 2006 Guidelines on the method of setting fines, by incorrectly applying by analogy the assessment of 'serious and irreparable harm' in relation to interim measures.

Action brought on 13 September 2010 — SLM v Commission

(Case T-389/10)

(2010/C 301/74)

Language of the case: Italian

Parties

Applicant: Siderurgica Latina Martin SpA (SLM) (Ceprano, Italy) (represented by: G. Belotti, lawyer, and F. Covone, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul Commission Decision C(2010) 4387 final, adopted on 30 June 2010 in Case COMP.38.344 — Pre-stressing steel;
- in the alternative, reduce the fine imposed.

Pleas in law and main arguments

The decision contested in the present proceedings is the same as that contested in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.