



Reports of Cases

Case C-652/11 P

Mindo Srl
v
European Commission

(Appeal — Competition — Agreements, decisions and concerted practices — Italian market for the purchase and first processing of raw tobacco — Payment of the fine by the jointly and severally liable debtor — Interest in bringing proceedings — Burden of proof)

Summary — Judgment of the Court (Seventh Chamber), 11 April 2013

1. *Appeals — Grounds — Specific criticism of a point in the General Court's reasoning and sufficiently precise identification of the error of law invoked — Admissibility*

(Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.; Rules of Procedure of the Court, Arts 168(1)(d) and 169(2))

2. *Appeals — Grounds — Inadequate statement of reasons — Scope of the obligation to state reasons — Obligation to respond to the applicant's clear and specific arguments*

(Art. 256(1) TFEU; Statute of the Court of Justice, Arts 36, 53, first para. and 58, first para.; Rules of Procedure of the General Court, Art. 81)

3. *Judicial proceedings — Production of evidence — Impossible burden of proof — Not permissible*

1. It follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Articles 168(1)(d) and 169(2) of the Rules of Procedure of the Court of Justice of the European Union that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. Since the appellant relies on errors of law made by the General Court, indicating, in a sufficiently precise manner, the contested elements of the judgment under appeal and the reasons for which it considers that those elements are marred by such errors, the appeal is admissible.

(see paras 21, 22)

2. There is an inadequate statement of reasons and, accordingly, infringement of an essential procedural requirement when it is held in a judgment of the General Court that the payment in full of the fine imposed by a decision of the Commission finding an infringement of the competition rules by one of the addressees of that decision is not sufficient to give rise to a claim on the part of the latter against another addressee, as jointly and severally liable co-debtor of the fine, despite the precise arguments to the contrary put forward by the jointly and severally liable co-debtor concerned.

Likewise, the duty to state reasons is infringed when the General Court fails to respond to a central part of the line of argument of the jointly and severally liable co-debtor, who is also the appellant, by failing, *inter alia*, to examine whether the creditor's right to bring an action in order to recover the part of the fine it paid is time-barred, despite the clear and precise arguments put forward in that respect by the jointly and severally liable co-debtor.

Where the appellant claims that the arrangement with creditors allows an insolvent undertaking to restructure its debt with all of its creditors and thus continue its activities, the General Court cannot merely respond to that decisive argument by stating that the jointly and severally liable debtor has not provided any explanation as to why it categorised the creditor as a 'prior creditor', or as to why the latter has not attempted to submit its claim.

(see paras 36, 37, 39, 41, 44, 45)

3. The General Court errs in law in making the applicant's interest in bringing proceedings subject to the condition that it prove a third party's intention to bring an action for recovery of its claim, thereby placing an impossible burden of proof on the applicant.

The finding of a lack of interest in bringing proceedings on the part of the addressee of a Commission decision imposing a fine cannot be based on mere assumptions, particularly when the General Court has failed to take sufficiently into account a series of elements put forward by applicant and intended to cast a different light on the facts of the case.

(see paras 50, 53)