Form of order sought

The appellant claims that the Court of Justice should:

— ***Primarily:***

— on the basis of Articles 256 TFEU and 56 of Protocol No 3 on the Statute of the Court of Justice of the European Union, set aside in full the judgement of the General Court of 17 May 2011 in Case T-299/08 Elf Aquitaine v Commission;

— grant the form of order which it sought at first instance before the General Court;

— consequently, annul Articles 1(f), 2(c), 2(e), 3 and 4 of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate);

— ***In the alternative***, amend, on the basis of Article 261 TFEU, the fine of EUR 22 700 000 imposed on Arkema SA and Elf Aquitaine joint and severally in Article 2(c) of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate), and the fine of EUR 15 890 000 imposed on Elf Aquitaine personally in Article 2(e) of that decision, in accordance with its unlimited jurisdiction, as a result of the objective errors in the grounds and the reasons for the judgment of the General Court of 17 May 2011 in Case T-299/08, as set out in its six grounds of appeal;

— ***In any event***, order the European Commission to pay all the costs, including those incurred by Elf Aquitaine before the General Court.

Pleas in law and main arguments

In support of its appeal, the appellant raises six main grounds of appeal and one in the alternative.

By its first ground of appeal, Elf Aquitaine SA claims that the General Court infringed Article 5 EU in so far as it validated the principle that a parent company is automatically liable for the infringements committed by its subsidiary, applied in the case at first instance by the Commission and justified by the concept of undertaking within the meaning of Article 101 TFEU. Such an approach is incompatible, or at least disproportionate, with the principles of conferral and subsidiarity (first part) and the principle of proportionality (second part).

By its second ground of appeal, the appellant submits that the General Court made a manifestly erroneous interpretation of national law and of the concept of undertaking in that it conferred an imprecise legal value to the principle of autonomy of legal persons, inter alia.

By it third ground of appeal, the appellant claims, in essence, that the General Court voluntarily refused to draw consequences from the criminal nature of competition law sanctions and from the new obligations resulting from the Charter of Fundamental Rights of the EU. In the appellant's view, the General Court applied the concept of undertaking under EU law abusively and erroneously, in spite of the presumption of autonomy on which national company law is based and of the criminal nature of competition law sanctions. Moreover, the appellant submits that the General Court should have raised, of its own motion, the illegality of the current administrative procedure before the Commission.

By its fourth plea in law, the appellant claims that its rights of defence have been infringed as a result of an erroneous interpretation of the principles of equality and equality of arms. The General Court approved the Commission's use of a *probatio diabolica* and erred in finding that the autonomy of a subsidiary must be assessed in a general manner in relation to its capital links with its parent company, whereas it should be assessed in relation to its conduct on a given market.

By its fifth ground of appeal, the appellant invokes an infringement of the duty to state reasons in that the General Court briefly took note of the rejection of its arguments by the Commission, without providing any analysis of the Commission's arguments (first part). Moreover, Elf Aquitaine SA accuses the General Court of failing to give reasons in relation to the presumption of imputability (second part), and insufficient reasons in relation to the personal fine imposed on the appellant (third part).

By its sixth plea, the appellant claims that the personal fine was unlawful as the Guidelines on the method of setting fines was misapplied (first part), a false legal basis was created to impose a personal fine (second part), and the grounds given for the judgment under appeal based on the concept of single undertaking and the imposition of an personal fine were contradictory (third part).

By its seventh and final ground of appeal (in the alternative), the appellant submits that the amount of the personal fine imposed on it for the purposes of deterrence were disproportionate and justify an amendment thereof.

Action brought on 5 August 2011 — European Commission v Grand Duchy of Luxembourg

(Case C-412/11)

(2011/C 298/29)

Language of the case: French

Parties

Applicant: European Commission (represented by: J.-P. Keppenne and H. Støvlbæk, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, because the measures adopted by it to implement the first railway package are insufficient, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 6(3) of and Annex II to amended Directive 91/440/EEC ([1]) and Article 14(2) of Directive 2001/14/EC, ([2])

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Commission complains of the national provisions in case since they provide that, in the event of disruption to traffic, allocation of train paths is made by the Société nationale des chemins de fer luxembourgeois (CFL; Luxembourg National Railway Company) and not by an independent body. CFL thus participates in the exercise of essential functions, which does not ensure fair and non-discriminatory access to the infrastructure for other operators.

In reply to the objections raised by the Luxembourg authorities, the Commission points out, firstly, that the statement of the Luxembourg authorities that there is no reallocation of train paths in the event of disruption to traffic is incorrect. When the timetable can no longer be followed, CFL lets late trains pass, which constitutes a reallocation of train paths. Secondly, the Commission contests the argument that Article 29 of Directive 2001/14/EC constitutes a *lex specialis* derogating from the general rule and enabling justification of the allocation of train paths by CFL in the event of disruptions.

([1]) Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ 2001 L 75, p. 1).

([2]) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29).

Reference for a preliminary ruling from the Polimeles Protodikio Athinon (Greece) lodged on 8 August 2011 — Daiichi Sankyo Company Limited, Sanofi-Aventis Deutschland GmbH v DEMO Anonimos Viomikhaniki kai Emporiki Etairia Farmakon

(Case C-414/11)

(2011/C 298/30)

Language of the case: Greek

Referring court

Polimeles Protodikio Athinon

Parties to the main proceedings

Plaintiffs: Daiichi Sankyo Company Limited, Sanofi-Aventis Deutschland GmbH

Defendant: DEMO Anonimos Viomikhaniki kai Emporiki Etairia Farmakon

Questions referred

1. Does Article 27 of the TRIPS Agreement setting out the framework for patent protection fall within a field for which the Member States continue to have primary competence and, if so, can the Member States themselves accord direct effect to that provision, and can the national court apply it directly subject to the requirements laid down by national law?

2. Under Article 27 of the TRIPS Agreement are chemical and pharmaceutical products patentable subject matter provided that they satisfy the requirements for the grant of patents and, if so, what is the scope of their protection?

3. Under Articles 27 and 70 of the TRIPS Agreement, do patents covered by the reservation in Article 167(2) of the 1973 Munich Convention which were granted before 7 February 1992, that is to say, before the above agreement entered into force, and concerned the invention of pharmaceutical products, but which, because of the aforementioned reservation, were granted solely to protect their production process, fall within the protection for all patents pursuant to the provisions of the TRIPS Agreement and, if so, what is the extent and content of that protection, that is to say, have the pharmaceutical products themselves also been protected since the above agreement entered into force or does protection continue to apply to their production process only or must a distinction be made based on the content of the application for grant of a patent, that is to say, as to whether, by describing the invention and the relevant claims, protection was sought at the outset for the product or the production process or both?

Appeal brought on 8 August 2011 by United Kingdom of Great Britain and Northern Ireland against the order of the General Court (Seventh Chamber) delivered on 24 May 2011 in Case T-115/10: United Kingdom of Great Britain and Northern Ireland v European Commission

(Case C-416/11 P)

(2011/C 298/31)

Language of the case: English

Parties

Appellant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, Agent, D. Wyatt QC, V. Wakefield, Barrister)

Other party to the proceedings: European Commission

Form of order sought

The applicant asks the Court that:

— the Order of the General Court be set aside;

— the United Kingdom's action for annulment be declared admissible and the case be referred back to the General Court so that it may examine the substance of the United Kingdom's action for annulment;