

Lastly, by the fifth ground of appeal, Caffaro alleges that the judgment under appeal failed to state adequate reasons and incorrectly assessed the attenuating circumstances on which Caffaro relied before the Commission. The appellant submits that the General Court also acted in breach of the rules of procedure and incorrectly assessed some of the evidence, to its detriment.

⁽¹⁾ OJ 2003 L 1, p. 1.

⁽²⁾ OJ 1998 C 9, p. 3.

Appeal brought on 31 August 2011 by SNIA SpA against the judgment delivered by the General Court (Sixth Chamber, extended composition) on 16 June 2011 in Case T-194/06 SNIA v Commission

(Case C-448/11 P)

(2011/C 311/47)

Language of the case: Italian

Parties

Appellant: SNIA SpA (represented by: A. Santa Maria, C. Biscaretti di Ruffia and E. Gambaro, lawyers)

Other party to the proceedings: European Commission

Form of order sought

- Set aside the judgment dismissing SNIA SpA's application and, accordingly, annul Commission Decision C(2006) 1766 final of 3 May 2006 in so far as it includes SNIA SpA among the addressees of the decision, imposing on it, jointly and severally with Caffaro Srl, a fine of EUR 1 078 million;
- In the alternative, refer the case back to the General Court for a fresh decision in accordance with any guidance and criteria which the Court is minded to provide in the present appeal proceedings;
- In any event, order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

By its first ground of appeal, SNIA claims that the General Court erred in law in that it automatically assumed that SNIA was liable on the basis that it had merged with Caffaro SpA and misapplied the rules governing the attribution of liability in competition matters, in particular with regard to what is referred to as the criterion of 'economic continuity', and the rules relating to the burden of proof. According to the appellant, the court at first instance also incorrectly categorised the case and distorted some of the evidence.

By its second ground of appeal, SNIA claims that the judgment under appeal failed to establish the inconsistency between the statement of objections and the contested decision with regard

to the merger of SNIA and Caffaro SpA. In particular, the appellant alleges that the General Court infringed and misapplied Article 27 of Regulation (EC) No 1/2003,⁽¹⁾ breach of its rights of defence and incorrect legal characterisation and distortion of the facts and evidence.

By the third ground of appeal, SNIA alleges misapplication of Article 296 TFEU, incorrect appraisal of the evidence such as distort its content and scope and breach of the rights of the defence. In particular, the appellant criticises the judgment under appeal in that it failed to establish that the reasons given in the contested decision were inadequate and contradictory, in so far as it concluded that SNIA was jointly and severally liable. Moreover, the appellant claims 'distortion' of the content of the contested decision and breach of its rights of defence, since the General Court found that it was liable on the basis of factors upon which SNIA did not have the opportunity to comment, either during the administrative procedure or the proceedings at first instance.

⁽¹⁾ OJ 2003 L 1, p. 1.

Appeal brought on 1 September 2011 by Solvay Solexis SpA against the judgment delivered by the General Court (Sixth Chamber, extended composition) on 16 June 2011 in Case T-195/06 Solvay Solexis v Commission

(Case C-449/11 P)

(2011/C 311/48)

Language of the case: Italian

Parties

Appellant: Solvay Solexis SpA (represented by: T. Salonico, G.L. Zampa and G. Barone, avvocati)

Other party to the proceedings: European Commission

Form of order sought

- Set aside the judgment under appeal and annul the contested decision in so far as they find that Ausimont participated in the infringement before May-September 1997 and, accordingly, recalculate the amount of the fine imposed on the appellant in Article 2 of the decision;
- Set aside the judgment under appeal and annul the contested decision in so far as, with reference to the period May — September 1997, they fail to recognise the lesser gravity of Ausimont's conduct, on account of the fact that it did not participate in the agreement on the limitation of capacity and in so far as they place Ausimont in an incorrect category for the purpose of determining the basic amount of the fine and, accordingly, recalculate the amount of the fine imposed on the appellant in Article 2 of the decision; or

- In the alternative, set aside the judgment under appeal in so far as referred to in the two preceding paragraphs and refer the case back to the General Court for a fresh decision;
- Order the Commission to pay the costs.

Pleas in law and main arguments

1. Infringement of Article 101 TFEU and Article 2 of Regulation No 1/2003, ⁽¹⁾ contradictory and insufficient statement of reasons and, in that connection, manifest distortion of the evidence, in that it has not been established that Ausimont's conduct from May 1995 to May-September 1997 can be classified as forming part of an 'agreement' or 'concerted practice'; nor are reasons given for the rejection of the objective evidence produced by the appellant to demonstrate that Ausimont's conduct during that period was highly competitive and independent.
2. Breach of the principles of equal treatment, non-discrimination and legal certainty, including in the light of the failure to have regard to the 1998 Guidelines on the method of setting fines, ⁽²⁾ failure to state reasons and manifest distortion of the evidence in relation to the assessment of the gravity of Ausimont's conduct and the determination of the sanction to be applied to it.

⁽¹⁾ OJ 2003 L 1, p. 1.

⁽²⁾ OJ 1998 C 9, p. 3.

Order of the President of the Court of 5 July 2011 (reference for a preliminary ruling from the Supreme Court of the United Kingdom (United Kingdom)) — JPMorgan Chase Bank N.A., J.P. Morgan Securities Limited v Berliner Verkehrsbetriebe (BVG), Anstalt des öffentlichen Rechts

(Case C-54/11) ⁽¹⁾

(2011/C 311/49)

Language of the case: English

The President of the Court has ordered that the case be removed from the register.

⁽¹⁾ OJ C 120, 16.4.2011.

Order of the President of the Court of 26 July 2011 (reference for a preliminary ruling from the Bundeskommunikationssenat (Austria)) — Publikumsrat des Österreichischen Rundfunks v Österreichischer Rundfunk

(Case C-162/11) ⁽¹⁾

(2011/C 311/50)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

⁽¹⁾ OJ C 179, 18.6.2011.