

**Appeal brought on 12 December 2012 by Shell Petroleum NV, The Shell Transport and Trading Company Ltd, Shell Nederland Verkoopmaatschappij BV against the judgment of the General Court (Sixth Chamber) delivered on 27 September 2012 in Case T-343/06: Shell Petroleum NV, The Shell Transport and Trading Company Ltd, Shell Nederland BV v European Commission**

(Case C-585/12 P)

(2013/C 55/08)

*Language of the case: English*

**Parties**

*Appellants:* Shell Petroleum NV, The Shell Transport and Trading Company Ltd, Shell Nederland BV (represented by: O.W. Brouwer, W. Knibbeler, A.A.J. Pliego Selie, P. D. van den Berg, advocaten)

*Other party to the proceedings:* European Commission

**Form of order sought**

The appellants claim that the Court should:

- set aside the paragraphs of the judgment as requested in the appeal,
- give final judgment and annul the contested decision or reduce the fine as requested in the appeal, or, in the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice, and
- order the European Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

The Appellants rely upon two pleas in law. In the judgment under appeal, the General Court partially dismissed the application brought by the Appellants for the partial annulment of the decision of the European Commission of 13 September 2006 (No. C(2006) 4090 final) relating to a proceeding under Article 81 EC (Case COMP/F/38.456 — Bitumen).

By its first plea, the Appellants respectfully submit that the General Court committed errors of law and failed to provide sufficient or adequate reasoning in finding that the contested decision demonstrates to the requisite legal standard that the same undertaking has committed repeated infringements. The General Court also erred in law and failed to provide sufficient or adequate reasoning by concluding that the test set out in the judgment in Case T-203/01, *Michelin*, is met. Finally, the General Court erred in law by shifting the burden of proof to the Appellants.

By its second plea, the Appellants respectfully submit that the General Court erred in law and failed to provide sufficient or

adequate reasoning in concluding that the European Commission was entitled to include the sales of the product Mexphalte C in the calculation of the fine. The General Court furthermore erred in procedure by failing to address certain arguments put forward by the Appellants. Moreover, the General Court failed to provide sufficient or adequate reasoning in failing to address the inconsistency resulting from the fact that industrial bitumen have been excluded from the calculation of the fine. The General Court also distorted the sense of essential evidence by relying on an inaccurate reading of a crucial document to reach a conclusion on Mexphalte C which clearly cannot be deduced from this document. The General Court furthermore erred in law and failed to provide sufficient or adequate reasoning duty when reviewing the amount of the fine under the exercise of its unlimited jurisdiction. Finally, the General Court committed a breach of procedure and infringed the rules governing the burden of proof in not investigating whether the European Commission had infringed the principle of equal treatment by including, in the fine on the Appellants, sales of Mexphalte C.

**Appeal brought on 10 December 2012 by Bimbo, SA against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2012 in Case T-569/10: Bimbo, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case C-591/12 P)

(2013/C 55/09)

*Language of the case: English*

**Parties**

*Appellant:* Bimbo, SA (represented by: C. Prat, abogado, R. Ciullo, Barrister)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs); Panrico SA

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court (Seventh Chamber) dated 10 October 2012, in Case T-569/10
- annul the decision of the Fourth Board of Appeal of OHIM dated 7 October 2010 (Case R 838/2009-4), since it infringes Article 8(1)(b) of Regulation No. 207/2009<sup>(1)</sup>
- order the respondent to pay the costs

**Pleas in law and main arguments**

In support of the appeal, the appellant relies on a single plea in law, alleging infringement of Article 8(1)(b) of Regulation No. 207/2009.