

**Action brought on 11 June 2012 — Kühne + Nagel International AG and Others v Commission**

(Case T-254/12)

(2012/C 227/52)

*Language of the case: German*

**Parties**

*Applicants:* Kühne + Nagel International AG (Schindellegi, Switzerland), Kühne + Nagel Management AG (Schindellegi, Switzerland), Kühne +Nagel Ltd (Uxbridge, United Kingdom), Kühne +Nagel Ltd (Shanghai, China), Kühne +Nagel Ltd (Hong Kong, China) (represented by: U. Denzel, C. Klöppner and C. von Köckritz, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Annul Articles 1, 2 and 3 of Commission Decision C(2012) 1959 final of 28 March 2012 in Case COMP/39462 — Freight Forwarding pursuant to the fourth paragraph of Article 263 TFEU, in so far as it concerns the applicants;
- In the alternative, reduce the level of the fines imposed on the applicants in Article 2 of the decision;
- Order the Commission to pay the applicants' costs pursuant to Article 87(2) of the Rules of Procedure of the General Court.

**Pleas in law and main arguments**

The Commission imposed a fine on the applicants because of participation in four different cartels in connection with the NES, AMS, CAF and PSS surcharges.

In support of the action concerning all the surcharges, the applicants rely on the following pleas in law:

- The imposition of the fine on the applicants is unlawful because of errors in the exercise of its discretion: first, the Commission wrongly determined the relevant turnover because the turnover relied upon by it bears no direct or indirect relationship to the infringement; second, and wrongly, no account was taken of the mitigating factors applicable to the applicants;
- The level of the fines imposed infringes the principle of proportionality and Article 49(3) of the Charter of Fundamental Rights of the European Union. Owing to the peculiarities of the freight sector, the fines imposed by the

Commission are grossly disproportionate and infringe Article 49(3) of the Charter of Fundamental Rights;

- The applicants' defence rights were infringed when the Commission rejected the application made by letter of 30 November 2011 for access to the file (to the file in Case COMP/39.258), thereby unlawfully restricting the applicants' defence rights.

In support of the claim in relation to the NES and AMS surcharges, the applicants also rely on the following pleas in law:

- Trade between the Member States is not affected. The Commission misapplied the law, since the conditions for application of Article 101(1) TFEU (effect on trade between Member States) are not satisfied;
- The Commission misapplied the law by wrongly assuming the power to sanction infringements in the air transport sector under Article 101(1) TFEU; the Commission in any case unlawfully failed to grant an exemption under Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector. The Commission did not have the legal power to sanction infringements of Article 101(1) TFEU by fines because before 1 May 2004 there was no implementing regulation for aviation and air transport between the Union and third countries was therefore exempt ('air transport exemption');
- The duration of the infringement was wrongly and unlawfully evaluated by the Commission in relation to the applicants. The Commission misapplied the law and failed to provide sufficient reasons for its decision in relation to the commencement date for the applicants. The applicants participated in the cartels regarding the NES surcharge from 4 November 2002 at the earliest and regarding the AMS surcharge from 21 October 2003 at the earliest.

**Action brought on 13 June 2012 — Hautau v Commission**

(Case T-256/12)

(2012/C 227/53)

*Language of the case: German*

**Parties**

*Applicant:* Hautau GmbH (Helpsen, Germany) (represented by: C. Peter, lawyer)

*Defendant:* European Commission