

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

Form of order sought

- Annul Commission Decision C(2012) 2069 final of 28 March 2012 in Case COMP/39452 — Mountings for windows and window-doors — in so far as it concerns the applicant;
- in the alternative, reduce, as appropriate, the fine imposed on the applicant;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on nine pleas in law.

1. First, the decision relating to the fine is erroneously based on the assumption of an infringement of Article 101 TFEU, which cannot be the case, however, since discussions took place in the full knowledge and at the request of the other party in the market.
2. Second, the decision relating to the fine is erroneously based on the assumption that mountings other than 'turn-and-tilt' mountings were the subject of the discussions between the participating undertakings.
3. Third, even if an infringement of Article 101 TFEU were to have occurred, the decision relating to the fine is in any event erroneously based on the assumption that special mountings were also affected by the anti-competitive conduct.
4. Fourth, the assumption that the applicant participated in any anti-competitive collusion beyond the territory of the Federal Republic of Germany is also mistaken. The most that might be envisaged with regard to the applicant would be an infringement of Article 101(1) TFEU in respect of the Italian and Greek market for the year 2007.
5. Fifth, the applicant also complains, in the alternative, further to the second to fourth pleas in law, that account was incorrectly taken, in the calculation of the fine, of turnover in respect of sliding mountings or special mountings, and of turnover not achieved in Germany. As a result of such turnover being included, the turnover established by the defendant for the purpose of establishing the basic amount was much too high. Consequently there was an infringement of Article 23(3) of Regulation No 1/2003.
6. Sixth, the applicant also complains in the alternative of an error of assessment in the calculation of the fine, with regard to the gravity of the infringement and the level of the increase for deterrence ('entry fee'). The percentage applied in the applicant's case in respect of the gravity of the infringement or the increase for deterrence was excessively high. To that extent also, there has been an infringement of Article 23(3) of Regulation No 1/2003.
7. Seventh, the applicant further complains in the alternative of an infringement of Article 23(3) of Regulation No 1/2003 on the basis of the account erroneously taken of the turnover which the applicant achieved together with other members of the cartel.
8. Eighth, the decision is, moreover, vitiated by a grave defect in reasoning. It must therefore be annulled in its entirety on account of an infringement of Article 296 TFEU and consequential breach of the applicant's rights of defence, irrespective of whether or not the applicant was involved in collusion contrary to Article 101 TFEU. It is not possible for the defect to be remedied during the ongoing proceedings.
9. Ninth, the Commission erroneously proceeds on the assumption that the applicant participated in the (allegedly) anti-competitive collusion from 16 November 1999 to 3 July 2007. The complaint of a single and continuous infringement from 16 November 1999 to 3 July 2007 cannot, however, be sustained owing to an independent price increase for 2001 and the absence of agreement in respect of 2002. Thus, at most, the decision could include the period from 2003. However, in so far as it is asserted that the applicant engaged in anti-competitive conduct beyond the German market, the most that might be attributed to the applicant would be an infringement of Article 101 TFEU in 2007. The applicant therefore takes the view that there is no basis for any assumption, with regard to the applicant, of an infringement lasting seven years and seven months.

Action brought on 11 June 2012 — Siegenia-Aubi and Noraa v Commission

(Case T-257/12)

(2012/C 227/54)

Language of the case: German

Parties

Applicants: Siegenia-Aubi KG (Wilnsdorf, Germany) and Noraa GmbH (Wilnsdorf, Germany) (represented by: T. Caspary and J. van Kann, lawyers)

Defendant: European Commission

Form of order sought

- Annul in part Commission Decision C(2012) 2069 final of 28 March 2012 in Case COMP/39452 — *Mountings for windows and window-doors* in so far as it concerns the applicants;