

Pleas in law and main arguments

By the first ground of appeal, which is subdivided into five parts, the Appellants claim that the General Court committed a number of procedural errors in carrying out its review:

The General Court erred by allowing the Commission to address in the judicial proceedings, for the first time, evidence in its file that contradicted the findings made in the Decision;

The General Court wrongly rejected the admissibility of the Appellants' submission of evidence from the Commission's file to rebut a claim newly raised by the Commission in its Rejoinder;

The General Court wrongly rejected the admissibility of an annex introduced by the Appellants to support their argument that the Commission took statements made by the Appellants during the administrative proceedings out of context;

The General Court breached the equality of arms principle by failing to consider evidence submitted by the Appellants during the judicial proceedings; and

The General Court failed to properly establish the facts.

By the second ground of appeal, the Appellants claim that the General Court distorted facts that are crucial to a proper assessment of the impugned conduct in its legal and economic context.

By the third ground of appeal, which is subdivided in five parts, the Appellants claim that the General Court inadequately assessed the evidence:

The General Court failed to provide adequate reasons to uphold the market share calculations relied upon by the Commission for purposes of establishing the relevant market structure;

The General Court erred by concluding that the Commission is not required to specify the content of those discussions the Appellants had with other undertakings which constitute a restriction of competition by object;

The General Court erred by concluding that the Commission clearly described the content of those discussions the Appellants had with other undertakings which constitute a restriction of competition by object;

The General Court failed to address the Appellants' argument that certain employees could not exchange credible information; and

The General Court erred by applying the wrong legal characterization of the facts when concluding that the discussions constitute a restriction of competition by object.

By the fourth ground of appeal, which is subdivided in two parts, the Appellants claim that the General Court committed various errors in calculating the fine imposed:

The General Court erred by calculating the fine based on sales of companies in relation to which no finding of an infringement was made; and

The General Court erred by counting sales of the same products twice for purposes of calculating the fine.

Appeal brought on 27 May 2013 by Bilbaína de Alquitranes, SA, Cindu Chemicals BV, Deza, a.s., Industrial Química del Nalón, SA, Koppers Denmark A/S, Koppers UK Ltd, Rütgers Germany GmbH, Rütgers Belgium NV, Rütgers Poland Sp. z o.o. against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 7 March 2013 in Case T-93/10: Bilbaina de Alquitranes and others v European Chemicals agency (ECHA)

(Case C-287/13 P)

(2013/C 252/23)

Language of the case: English

Parties

Appellants: Bilbaína de Alquitranes, SA, Cindu Chemicals BV, Deza, a.s., Industrial Química del Nalón, SA, Koppers Denmark A/S, Koppers UK Ltd, Rütgers Germany GmbH, Rütgers Belgium NV, Rütgers Poland Sp. z o.o. (represented by: K. Van Maldegem, avocat)

Other party to the proceedings: European Chemicals Agency (ECHA)

Form of order sought

The appellants claim that the Court should:

- set aside the judgment of the General Court in Case T-93/10; and
- annul Decision ED/68/2009 of the European Chemicals Agency (the 'Contested Decision') identifying pitch, coal, tar, high temp, CAS Number 65996-93-2 ('CTPHT') as a substance to be included on the Candidate List in accordance with Article 59 of Regulation (EC) No 1907/2006 ('REACH')⁽¹⁾; or
- alternatively, refer the case back to the General Court to rule on the appellants' application for annulment; and
- order the respondent to pay all the costs of these proceedings (including the costs before the General Court).

Pleas in law and main arguments

The appellants submit that, in dismissing their application for partial annulment in respect of the contested decision, the General Court breached Community law. In particular, the appellants contend that the General Court committed a number of errors in its interpretation of the legal framework as applicable to the appellants' situation. That resulted in the General Court making a number of errors in law; in particular:

- in finding that the case related to complex scientific and technical facts and that the identification of CTPHT s having PBT and vPvB properties on the basis of its constituents present in a concentration of at least 0.1% was not vitiated by a manifest error;
- that the constituents of CTPHT do not have to be individually identified as having PBT or vPvB properties in a separate ECHA decision based on a thorough assessment for that purpose; and
- that there was no breach of the principle of equal treatment

For these reasons the appellants claim that the judgment of the General Court in Case T-93/10 should be set aside and the contested decision should be annulled.

(¹) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, p. 1

Appeal brought on 27 May 2013 by Rütgers Germany GmbH, Rütgers Belgium NV, Deza, a.s., Industrial Química del Nalón, SA, Bilbaína de Alquitrane, SA against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 7 March 2013 in Case T-94/10: Rütgers Germany GmbH and others v European Chemicals Agency (ECHA)

(Case C-288/13 P)

(2013/C 252/24)

Language of the case: English

Parties

Appellants: Rütgers Germany GmbH, Rütgers Belgium NV, Deza, a.s., Industrial Química del Nalón, SA, Bilbaína de Alquitrane, SA (represented by: K. Van Maldegem, avocat)

Other party to the proceedings: European Chemicals Agency (ECHA)

Form of order sought

The appellants claim that the Court should:

- set aside the judgment of the General Court in Case T-94/10; and
- annul Decision ED/68/2009 of the European Chemicals Agency ('ECHA') (the 'Contested Decision') identifying Anthracene oil as a substance to be included on the Candidate List in accordance with Article 59 of Regulation (EC) No 1907/2006 ('REACH') (¹), or
- alternatively, refer the case back to the General Court to rule on the appellants' application for annulment; and

order the respondent to pay all the costs of these proceedings (including the costs before the General Court).

Pleas in law and main arguments

The appellants submit that, in dismissing their application for partial annulment in respect of the contested decision, the General Court breached Community law. In particular, the appellants contend that the General Court committed a number of errors in its interpretation of the legal framework as applicable to the appellants' situation. That resulted in the General Court making a number of errors in law; in particular:

- in finding that the case related to complex scientific and technical facts and that the identification of anthracene oil as having PBT and vPvB properties on the basis of its constituents present in a concentration of at least 0.1% was not vitiated by a manifest error;
- the constituents do not have to be individually identified as having PBT or vPvB properties in a separate ECHA decision based on a thorough assessment for that purpose;
- Article 59(3) and Annex XV of REACH were not breached because information on alternative substances was not included in the Annex XV dossier; and
- that there was no breach of the principle of equal treatment

For these reasons the appellants claim that the judgment of the General Court in Case T-94/10 should be set aside and the contested decision should be annulled.

(¹) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, p. 1