

Appeal brought on 3 April 2014 by Evonik Degussa GmbH, AlzChem AG, formerly AlzChem Trostberg GmbH, formerly AlzChem Hart GmbH against the judgment of the General Court (Third Chamber) delivered on 23 January 2014 in Case T-391/09 Evonik Degussa GmbH, AlzChem AG, formerly AlzChem Trostberg GmbH, formerly AlzChem Hart GmbH v European Commission

(Case C-155/14 P)

(2014/C 184/19)

Language of the case: German

Parties

Appellants: Evonik Degussa GmbH, AlzChem AG, formerly AlzChem Trostberg GmbH, formerly AlzChem Hart GmbH (represented by: C. Steinle, Rechtsanwalt, I. Bodenstein, Rechtsanwältin)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

1. set aside the judgment of the General Court (Third Chamber) of 23 January 2014 (Case T-391/09), in so far as it affects the appellants;
2. annul Commission Decision C(2009) 5791 final of 22 July 2009 (Case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel and gas industries), in so far as it affects the appellants;

in the alternative, reduce the fine imposed on the appellants by Article 2(g) and (h) of that decision;

in the alternative, in the event that the foregoing claim is dismissed, amend Article 2(g) and (h) of the decision, so that SKW Stahl-Metallurgie GmbH is jointly and severally liable for the full amount of the fine imposed on the appellants; the appellants understand this alternative claim in the way the General Court has understood it in paragraphs 264 and 265 of the judgment, namely as an alternative claim for an increase in the proportion of the fine imposed on the appellants, which is considered to be paid when SKW pays the fine imposed on them by the Commission.

3. in the alternative to the second head of claim, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice as to points of law;
4. in any event, order the Commission to pay the appellants' costs of the proceedings before the General Court and the Court of Justice.

Grounds of appeal and main arguments

The appeal is against the judgment of the General Court of 23 January 2014 in Case T-391/09, in so far as it affects the appellants. In the judgment, the General Court partially upheld and partially dismissed the appellants' actions brought against Commission Decision C(2009) 5791 final of 22 July 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel and gas industries).

The appellants raise five grounds of appeal:

1. By the first ground of appeal, the appellants claim that the General Court attributed to them the anti-competitive conduct of SKW Stahl-Technik GmbH & Co. KG ("SKW") in breach of the range of the attribution of liability under Article 81 EC (now Article 101 TFEU), the principle of personal responsibility, the presumption of innocence and the principle that liability presupposes fault by rejecting the rebuttal of the presumption of decisive influence. Against express specific instructions of the appellants, SKW unilaterally participated in a cartel from April 2004 in a power vacuum before the imminent sale of that company to a third party. In that exceptional special case, which can be clearly differentiated from the general body of cases dealt with so far, the General Court wrongly denied fairness in individual cases.

2. By the second ground of appeal, the appellants claim that, in breach of the rights of defence and the duty to state reasons, the General Court rejected their argument that the Commission decision should have been declared void because the proportions of liability in the internal relationship of the joint and several debtors were not determined in conformity with the judgment since delivered by the General Court in Joined Cases T-122/07 to T-124/07 *Siemens Österreich* [2011] ECR II-793. The argument in the action was neither late nor insufficient.
3. With reference to the amount of the fine, the appellants allege by their third ground of appeal that the General Court infringed the principle of equal treatment when it did not — as in the parallel case *Gigaset* — reduce the fines against the appellants in light of the errors in calculating the fine, in particular the failure to take into account an entrance fee and the incorrect taking into account of a leniency reduction in SKW's fine.
4. The appellants welcome the fact that, when setting their new fine, the General Court also reassessed the proportion of the fine 'which will be considered to be paid when SKW makes payments in connection with the fine imposed on them by the contested decisions' (operative part of the judgment, point 2, first indent). By the fourth alternative ground of appeal, the appellants claim, however, that, in breach of the principle of legal certainty, *nulla poena sine lege certa* and the duty to state reasons in the reassessment, the General Court did not expressly determine the double repayment effect of a payment from SKW for both ARQUES Industries AG ('Arques') (now *Gigaset AG* ('Gigaset')) and for the appellants.
5. By the fifth alternative ground of appeal, the appellants claim that, in reassessing the fines, the General Court, in breach of the principles for setting joint and several fines (Article 81 EC, Article 23 of Regulation No 1/2003) ⁽¹⁾ in particular, deducted the leniency reduction in the proportion which is considered to be paid by a performance by SKW. The General Court thereby allowed for a leniency reduction in that proportion at the expense of the appellants although SKW did not cooperate with the Commission in accordance with the Leniency Notice.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; OJ 2003 L 1, p. 1.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 4 April 2014 — Société Neptune Distribution v Minister for Economic Affairs and Finance

(Case C-157/14)

(2014/C 184/20)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société Neptune Distribution

Defendant: Minister for Economic Affairs and Finance

Questions referred

1. Is the basis for calculating the 'equivalent value for salt' of the quantity of sodium present in a foodstuff, for the purposes of the annex to Regulation (EC) No 1924/2006, ⁽¹⁾ constituted only by the quantity of sodium which, when associated with chloride ions, forms sodium chloride, or table salt, or does it include the total quantity of sodium in all its forms contained in the foodstuff?