

- annul the judgment of the General Court of 15 July 2015 in Case T-47/10 and refer the case back to the General Court for it to make all necessary decisions on the merits; and
- order the Commission to pay the costs of this appeal.

### **Pleas in law and main arguments**

In support of their appeal, the Appellants submit that the General Court made an error of law in the application of rules concerning the liability of parent companies by concluding that the liability for the fines originally imposed on the subsidiaries but annulled by the General Court can still be attributed to Akzo Nobel N.V.

In a situation such as the present case in which the liability of a parent company is purely derivative of that of its subsidiaries, the liability of that parent company cannot exceed the liability for which its subsidiaries are ultimately liable. As a result, the annulment of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. should have led to the annulment of the fine imposed on Akzo Nobel N.V.

This is all the more pertinent in the case at hand where the annulment of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. should have also led to the annulment of the entire decision vis-à-vis these two legal entities.

In 2011, following the judgment of the Court of Justice in the ArcelorMittal case, the Commission was confronted with the fact that its power to impose a fine on Elementis and Ciba/BASF was time-barred. The Commission then decided to repeal its entire 2009 decision in as far as addressed to any legal entity of these two groups of companies.

If the Commission were to have taken the same approach concerning Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V., which were in the same position, the Commission would have repealed its decision finding that these entities participated in the infringement in the first place. If these same situations were to have been treated equally, the question of attribution of liability would have never occurred since there was no need or legal basis for attributing any liability for a fine to Akzo Nobel N.V. in the first place.

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### **Appeal brought on 25 September 2015 by Trafilerie Meridionali SpA against the judgment of the General Court (Sixth Chamber) of 15 July 2015 in Case T-422/10**

**(Case C-519/15 P)**

(2015/C 406/24)

*Language of the case: Italian*

### **Parties**

*Appellant:* Trafilerie Meridionali SpA (represented by: P. Ferrari and G.M.T. Lamicela, avvocati)

*Other party to the proceedings:* European Commission

### **Form of order sought**

The appellant claims that the Court should:

- set aside the judgment under appeal in so far as it rejects the plea according to which Club Europa cannot be imputed to Trame (even) for the period between 9 October 2000 and 19 September 2002, and also the part of the judgment under appeal concerning the fine imposed on the appellant (paragraphs 3 and 4 of the operative part of the judgment under appeal), and therefore uphold the form of order sought at first instance before the General Court, also in respect of the fine; in the alternative, set aside the judgment under appeal in respect of the above parts and refer the case back to the General Court for adjudication on the point in the light of such guidance as the Court of Justice may provide;

- set aside the judgment under appeal in so far as it rejects the plea according to which Trame should also be granted a fine reduction as a result of an inability to pay pursuant to the principle of equal treatment, and also the part of the judgment under appeal concerning the fine imposed on the appellant (paragraphs 3 and 4 of the operative part of the judgment under appeal), and therefore uphold the form of order sought at first instance before the General Court, also in respect of the fine; in the alternative, set aside the judgment under appeal in respect of the above parts and refer the case back to the General Court for adjudication on the point in the light of such guidance as the Court of Justice may provide;
- set aside the judgment under appeal in the part concerning the calculation of the fine imposed on Trame (paragraph 3 of the operative part of the judgment under appeal), replacing it with its own decision in that respect; in the alternative, set aside the judgment in that part and refer the case back to the General Court for adjudication on the point in the light of such guidance as the Court of Justice may provide;
- set aside the judgment under appeal in so far as it orders Trame to pay its own costs relating to the main proceedings at first instance in Case T-422/10 (paragraph 5 of the operative part of the judgment under appeal), and order the Commission to pay those costs, or at least part thereof;
- order the Commission to pay the costs of the present proceedings;
- declare that the General Court failed in its duty to adjudicate within a reasonable time in the dispute brought before it by the appellant in Case T-422/10, in accordance with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union;
- adopt any other measure that it deems appropriate.

### Grounds of appeal and main arguments

1. **First ground of appeal:** the imputation of Club Europa to Trame. Distortion of the evidence. Manifestly unreasonable reading and evaluation of that evidence.

The General Court erred in law by rejecting the plea that the Club Europa could not be imputed to Trame (even) for the period between 9 October 2000 and 19 September 2002, by reason of a distortion of the evidence, or by reason of a manifestly unreasonable reading and evaluation of it. In the light of this, the judgment under appeal is also vitiated in the part concerning the fine imposed on the appellant.

2. **Second ground of appeal:** the failure to grant Trame a fine reduction as a result of an inability to pay. Failure to state reasons. Breach of Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice. Breach of Article 117 of the Rules of Procedure of the General Court.

The General Court erred in law by failing to explain adequately, or even by implication, the reasons why it rejected the plea alleging infringement of the principle of equal treatment by the Commission when granting relief stemming from an inability to pay, with the result that the appellant was unable to know the reasons on which the judgment under appeal was based and the Court of Justice also prevented from having sufficient information in order to carry out its review. From another point of view, the General Court failed to take into account factors of crucial importance for the purpose of resolving this point. In the light of this, the judgment under appeal is also vitiated in the part concerning the fine imposed on the appellant.

3. **Third ground of appeal:** the methodology used by the General Court in the redetermination of the fine. Failure to state reasons. Breach of Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice. Breach of Article 117 of the Rules of Procedure of the General Court.

The General Court erred in law by failing to provide an adequate explanation of its methodology in calculating the fine in the context of the redetermination of the penalty to be imposed on Trame and, in particular, of the 'weight' attributed to each of the different factors relevant in that context. That failure makes it impossible, inter alia, to establish whether the General Court, when calculating the fine, acted in accordance with the principle of equal treatment.

4. **Fourth ground of appeal:** concerning the costs relating to the proceedings at first instance before the General Court.

If one or both of the grounds set out in sections A and B of the appeal is upheld, this must also have an impact on the General Court's conclusion in paragraphs 411 and 412 of the judgment under appeal, according to which each party is required to bear its own costs. Accordingly, the judgment must also be set aside in so far as it also requires the appellant to bear its own costs relating to the main proceedings at first instance in Case T-422/10, and the Commission must be ordered to pay those costs, or at least part thereof.

5. **Fifth ground of appeal:** the right to judicial protection within a reasonable time. Breach of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union. Trame claims that the General Court failed to comply with its obligation to adjudicate within a reasonable time in the dispute brought before it by the appellant in Case T-422/10, and that it consequently breached the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

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**Action brought on 29 September 2015 — Kingdom of Spain v Council of the European Union**

(Case C-521/15)

(2015/C 406/25)

*Language of the case: Spanish*

**Parties**

*Applicant:* Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- annul Council Decision (EU) 2015/1289 <sup>(1)</sup> of 13 July 2015 imposing a fine on Spain for the manipulation of deficit data in the Autonomous Community of Valencia, or
- alternatively, reduce the fine by limiting it only to those periods after 13 December 2011, the date on which Regulation 1173/2011 <sup>(2)</sup> entered into force, and
- in any event, order the Council of the European Union to pay the costs.