

2. Second plea in law, alleging infringement of the principles of proportionality and adequacy in determining the basic amount of the penalty.
 - The applicants maintain in that respect that, for the purposes of calculating the basic amount of the fine, the value of the sales made in the last year of participation in the infringement was taken into consideration in the contested decision, even though that value did not actually represent the true market strength of the applicants and the other parties to the proceedings.
3. Third plea in law, alleging infringement of Article 23(2) of Regulation (EC) No 1/2003.
 - The applicants maintain in that respect that the value taken into consideration by the Commission for the purposes of calculating the 10 % limit laid down by Article 23(2) of Regulation (CE) No 1/2003 is clearly wrong, since that figure:
 - includes the total turnover of the CCPL group, even though the Commission has by no means proved the parental liability of the group's parent company;
 - includes the turnover generated by an entity that was no longer part of the CCPL group at the time of the decision;
 - does not take any account of any specific circumstances concerning the breakdown of the turnover attributed to the CCPL group.
4. Fourth plea in law, alleging infringement of the principles of proportionality and equal treatment in determining the size of the penalty.
 - The applicants claim in that regard that the serious crisis facing the packaging sector was not taken into account in the least in the contested decision and that the fine imposed on the applicants is clearly and unjustifiably disproportionate compared with that imposed on the other parties.
5. Fifth plea in law, alleging infringement by the European Commission of the obligation to state reasons under Article 296 TFEU, on the ground that it took into account only partially the evidence concerning inability to pay adduced by the CCPL group.
 - The contested decision, although recognising the very serious crisis faced by the applicants, did not take that sufficiently into account in setting the level of the penalty.

Action brought on 10 September 2015 — Italmobiliare and Others v Commission

(Case T-523/15)

(2015/C 354/64)

Language of the case: Italian

Parties

Applicants: Italmobiliare SpA (Milan, Italy), Sirap-Gema SpA (Verolanuova, Italy), Sirap France SAS (Noves, France), Petruzalek GmbH (Tattendorf, Austria), Petruzalek kft (Budapest, Hungary), Petruzalek s.r.o. (Bratislava, Slovakia), Petruzalek s.r.o. (Břeclav, Czech Republic) (represented by: M. Siragusa, F. Moretti and A. Bardanzellu, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- first, obtain of its own motion an expert report in respect of the economic analysis of the case;

- annul the decision to the extent that it considered that the benefit of immunity from the penalties referred to in the Commission Notice on immunity from fines and reduction of fines in cartel cases ('the Notice') applies to Linpac;
- annul the decision in so far as it also attributed the conduct penalised to Italmobiliare, and ordered it, jointly and severally, to pay the fines;
- reduce the amounts of the penalties imposed;
- order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the decision also contested in Case T-522/15, *CCPL and Others v Commission*.

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

1. First plea in law: infringement of the Notice and the principle of equal treatment in so far as the Commission granted immunity to Linpac even though the necessary conditions set out in the Notice itself were not fulfilled.
 2. Second plea in law: infringement of Article 101 TFEU, the principle of legal certainty, the principle that penalties must be specific to the offender and the principle of presumption of innocence referred to in Articles 6(2) and 7 of the European Convention on Human Rights ('the Convention') and Articles 48 and 49 of the Charter of Fundamental Rights of the European Union ('the Charter'), the fundamental right of property referred to in Article 1 of the Additional Protocol to the Convention, Article 14 of the Convention and Articles 17 and 21 of the Charter, as well as infringement of the principles of non-discrimination and equal treatment, in so far as the Commission erred in considering Italmobiliare jointly and severally responsible as the parent company for the conduct of companies under its control.
 3. Third plea in law: infringement of Article 101 TFEU, Article 23 of 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), the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 ('the Guidelines') and the principles of proportionality and equal treatment in relation to determining the following elements/parameters when calculating the penalties: (i) sales value; (ii) amount according to severity; (iii) entry fee; (iv) adjustments to the basic amount (in particular, failure to take into consideration the crisis facing the sector); (v) the maximum statutory threshold under Article 23(2) of Regulation No 1/2003 and (vi) insufficient reduction in penalties owing to the length of the proceedings; and finally infringement of Article 101 TFEU of the guidelines and failure to state reasons in relation to the failure to grant the request to apply point 35 of those guidelines.
 4. Fourth plea in law: the applicants claim that, on the basis of Article 31 of Regulation No 1/2003 the General Court of the European Union should exercise its unlimited jurisdiction and, even if the above pleas in law are rejected, replace the Commission's assessment with its own and, in any event, reduce all the fines imposed in the decision.
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