— Second part, based on the argument that the exclusion from the operative part of the decision of airlines which had been involved in those practices is vitiated by an infringement of the principles of equal treatment and non-discrimination and of the principle of protection against arbitrary intervention on the part of the Commission;

4. Fourth plea in law, alleging that the inclusion of the inbound EEA traffic in the single and continuous infringement is contrary to the rules imposing limits on the Commission's territorial powers. This plea is divided into two parts:

   — First part, based on the fact that the practices relating to inbound EEA traffic were not implemented within the EEA;

   — Second part: the Commission has not demonstrated the existence of serious effects within the EEA linked to the practices relating to inbound EEA traffic;

5. Fifth plea in law, alleging contradictory reasoning and a manifest error of assessment vitiating the finding that the refusal to pay commission to freight forwarders amounts to a separate aspect of the single and continuous infringement. This plea comprises two parts:

   — First part, according to which that finding is vitiated by contradictory reasoning;

   — Second part, according to which that finding is vitiated by a manifest error of assessment;

6. Sixth plea in law, alleging an error in the sales values taken into account to calculate the fine imposed on Air France-KLM; this plea is divided into two parts:

   — First part, alleging that the inclusion of tariffs in the sales value is based on contradictory reasoning, several errors of law and a manifest error of assessment;

   — Second part, alleging that the inclusion of 50 % of the inbound EEA income in the sales values infringes the 2006 Guidelines on the calculation of fines and the *ne bis in idem* principle;

7. Seventh plea in law, alleging an erroneous assessment of the severity of the infringement; this plea comprises two parts:

   — First part, based on the argument that the overestimation of the seriousness of the practices is based on several manifest errors of assessment and infringement of the principles of proportionality of penalties and equal treatment;

   — Second part, based on the argument that the overestimation of the seriousness of the practices stems from the inclusion in the scope of the infringement of contacts relating to practices implemented outside the EEA, in breach of the rules governing the Commission's territorial powers;

8. Eighth plea in law, alleging an error in the calculation of the duration of the infringement imputed to Air France and taken into account for the calculation of the fine imposed on Air France-KLM;

9. Ninth plea in law, alleging a failure to state reasons and inadequacy of the 15 % reduction granted by the Commission in respect of the regulatory regimes.

Action brought on 13 June 2017 — Qualcomm and Qualcomm Europe v Commission

(Case T-371/17)

(2017/C 256/39)

Language of the case: English

Parties

Applicants: Qualcomm, Inc. (San Diego, California, United States), Qualcomm Europe, Inc. (San Diego) (represented by: M. Pinto de Lemos Fermiano Rato and M. Davilla, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul decision C(2017) 2258 final of the European Commission, of 31 March 2017, relating to a proceeding pursuant to Article 18(3) and to Article 24(1)(d) of Council Regulation No 1/2003 in Case AT.39711 — Qualcomm (predation); and

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging that the contested decision infringes the principle of necessity

— The applicants first put forward that the contested decision exceeds the narrow scope of the Commission's investigation as that scope was defined in the Statement of Objections ('SO'), the Oral Hearing, the State-of-Play meeting, and in previous requests for information ('RFI's'), both in terms of duration of the alleged abuse and potential theories of harm being pursued by the Commission.

— They further allege that the far-reaching questions contained in the contested decision cannot be characterised as follow-up questions that would merely seek clarifications in relation to arguments made by them in the SO response and during the Oral Hearing, but as entirely new, unwarranted requests.

— Further, according to the applicants, the contested decision seeks to follow-up on points that concern their responses to RFIs adopted, in some instances, more than five years ago, and pertaining to facts that occurred ten years or more ago. The applicants claim that, were the additional information now requested truly necessary for the Commission to pursue its investigation, they would legitimately have expected that he Commission would at the very least have sought such information and clarifications prior to the SO's adoption in December 2015, and not in early 2017.

— Further, according to the applicants, the contested decision requests them to perform a significant amount of work on behalf of the Commission, including processing data to be provided in a specific format.

— Finally, the applicants put forward that the Commission cannot impose, under the threat of fines, a burden seemingly designed to allow the applicants to substantiate arguments made by them in the SO Response.

2. Second plea in law, alleging that the contested decision infringes the principle of proportionality

— The applicants put forward that the information the contested decision seeks to obtain from them is unwarranted, far-reaching and extremely burdensome to collect or to compile. According to the applicants, the contested decision requires them to collect vast amounts of information that they do not collect and store in a systematic way in the ordinary course of business and undertake a very significant amount of work on the Commission's behalf.

— The applicants further put forward that the periodic penalty payments foreseen in the contested decision should the applicants fail to provide such information within specified time-limits are unwarranted, and the time-limits set are unreasonable.

3. Third plea in law, alleging that the contested decision lacks adequate reasoning

The applicants put forward that in a number of instances, the contested decision provides unconvincing, unclear, vague and inadequate reasons which fail to justify the Commission's over-reaching and unnecessary requests for information. According to the applicants, in other instances, the contested decision does not provide any reasons at all. The applicants thus claim that they cannot understand the reasons why the requested information is necessary for the Commission to conduct its investigation.

4. Fourth plea in law, alleging that the war decision seeks to perpetrate an undue reversal burden of proof

The applicants put forward that the contested decision seeks to reverse the burden of proof and effectively 'outsource' to the applicants the building of a case against them. In particular, the contested decision requests that the applicants verify, on the Commission's behalf, the applicants' accounting data entries, even though such data has been diligently audited by external controllers. Similarly, so the applicants state, the contested decision asks the applicants to prove that it has conducted its business in accordance with the law.

5. Fifth plea in law, alleging that the contested decision infringes the right to avoid self-incrimination

   — The applicants put forward that the contested decision requires them to provide 'information' that cannot legitimately be considered as consisting of facts or documents, but which consists instead of calculations, details and codes, hypothetical prices, and analyses and interpretations of historical assumptions made several years ago.

   — The applicants further put forward that the contested decision requires them to demonstrate that they have proactively taken measures to comply with EU competition rules.

6. Sixth plea in law, alleging that the contested decision infringes the principle of sound administration

   According to the applicants, the timing of adoption, content and context of the contested decision raise serious concerns of mal-administration, prosecutorial basis, and harassment and they suggest that the Commission is abusing its broad investigatory powers in an attempt to conceal its failure to establish the alleged infringement after more than seven years of investigation.

Action brought on 12 June 2017 — Louis Vuitton Malletier v EUIPO — Bee Fee Group (LV POWER ENERGY DRINK)

(Case T-372/17)

(2017/C 256/40)

Language in which the application was lodged: English

Parties

Applicant: Louis Vuitton Malletier (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi and N. Parrotta, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Bee Fee Group LTD (Nicosia, Cyprus)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU figurative mark in black, red and white containing the word elements 'LV POWER ENERGY DRINK' — EU trade mark No 12 898 219

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 29 March 2017 in Case R 906/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and thus declare invalid the contested mark;

— order EUIPO to pay the costs incurred by the applicant during these proceedings;

— order the proprietor to pay the costs incurred by the applicant during these proceedings.

Pleas in law

— Infringement of Article 8(5) of Regulation No 207/2009;

— Infringement of Article 75 of Regulation No 207/2009 and of the principle of legal certainty.
