

*Pleas in law and main arguments adduced in support:*

The applicant contends that the findings against the applicant of infringements of Article 85 are erroneous, being based on a materially incorrect appreciation of the facts and vitiated by manifest error of assessment.

Further, or in the alternative, the applicant contends that the Commission failed to observe essential procedural requirements in that:

- the reasoning to support the findings of infringement against the applicant is inadequate, and/or
- the applicant was deprived of a proper opportunity to be heard in so far as certain findings of infringement in the Decision were not set out in the Statement of Objections served on the applicant in the administrative proceedings.

**Action brought on 22 February 1995 by Asland SA against the Commission of the European Communities**

(Case T-55/95)

(95/C 119/41)

*(Language of the case: Spanish)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 February 1995 by Asland SA, whose registered office is Barcelona (Spain), represented by Antonio Creus Carreras, of the Barcelona Bar, Antonio Hierro Hernández Mora, of the Madrid Bar, and Xavier Ruiz Calzado, of the Barcelona Bar, with an address for service in Brussels at 78 Avenue d'Auderghem.

The applicant claims that the Court should:

- annul in whole or in part Commission Decision (94) 3077 final of 30 November 1994,
- in the alternative, in the event that the Decision is upheld in whole or in part, cancel the fine imposed on Asland SA in Article 9,
- in the further alternative, in the event that the Decision is upheld in whole or in part, substantially reduce the fine imposed on Asland SA in Article 9,
- order the Commission to pay to Asland SA the whole of the costs of the proceedings, including the costs (with interest) of the security lodged for payment of the whole or part of the fine.

*Pleas in law and main arguments adduced in support:*

The applicant relies on the following grounds in support of its application:

- I. Infringement of Article 6 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms. In the view of the applicant, the procedure followed by the Commission in competition law is one which may lead to the imposition of sanctions and, as such, should have the procedural guarantees which are characteristic of criminal proceedings, as is recognized in Member States where the administrative law provides for the imposition of penalties. None the less, in Community law the Commission is the body which both investigates and makes decisions, with the power to impose coercive sanctions on undertakings which are the subject of proceedings. Therefore the procedure lacks objectivity, contrary to Article 6 of the abovementioned Convention.

- II. Infringement of rights of the defence. The applicant maintains that its rights were infringed in the course of the administrative procedure inasmuch as:

1. it was not given access to the full file;
2. the objections raised against the applicant were not sufficiently specified;
3. the Decision contains new objections which are different to those raised against the applicant in the Statement of Objections.

- III. Insufficient statement of reasons. The applicant states that the Commission has failed to set out clearly and coherently the considerations of fact and law on which it has based its Decision, so that neither the applicant nor the Court of First Instance is in a position to be cognizant of the elements of its reasoning.

- IV. Misapplication of Article 85 (1) to the applicant's conduct.

1. First, the applicant considers that, in so far as it is concerned, the Commission has not determined the facts correctly, since it is alleged to have participated in the 'Cembureau Agreement' solely on the basis of its proven attendance at a meeting prior to that setting up the 'European Task Force' and on the unfounded assumption that it also participated in the subsequent meeting of that group.

2. Secondly, the applicant states that, in so far as it is concerned, all the legal assessments of the Commission of the unproven facts are unfounded, since it has not been proven that, by attending the meeting in Rome in May 1986 the applicant had infringed Article 85 (1) of the EC Treaty.

- V. In the alternative, in so far as concerns the fine, the applicant pleads:

1. inadequacy of the reasons given for the fine;
2. misapplication of Article 15 (2) of Regulation No 17/62 to the conduct of the applicant;
3. breach of the principle of equal treatment;

4. breach of the principle of equitable treatment of the undertakings with respect to the ecu exchange rate to be applied for the fines.

**Action brought on 23 February 1995 by Heracles General Cement Company against the Commission of the European Communities**

(Case T-57/95)

(95/C 119/42)

*(Language of the case: English)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 February by Heracles General Cement Company, represented by Mr Kostas Loukopoulos, Mr Sebastian Farr and Mr Ciaran Walker with an address for service in Luxembourg at the chambers of Me Jos Stoffel, 8, Rue Willy Goergen, L-1636 Luxembourg.

The applicant claims that the Court should:

- review under Article 173 of the EC Treaty the legality of the Commission Decision of 30 November 1994 <sup>(1)</sup> and declare it void or annul it under Article 174 of the EC Treaty, on the grounds of infringement of the EC Treaty and the rules of law relating to its application and of infringement of essential procedural requirements,
- cancel under Article 172 of the EC Treaty the fine imposed on the applicant, or to significantly reduce it:
  - (i) in the event that the Court decides that the application under Article 173 is well-founded, the fine should be cancelled;
  - (ii) if, on the other hand, the Court were to uphold the Decision, in whole or in part, the applicant submits that the fine should nevertheless be substantially reduced,
- order, under Articles 65 and 66 of the Rules of Procedure of the Court, the Commission to produce all internal notes, memoranda and draft documents prepared by Members of the Commission or Officials or the Commission, minutes of the Commission's meetings and opinions of the Advisory Committee on restrictive practices and monopolies, meetings relating to:
  - (i) the dissemination of the applicant's defence, as set out in its response to the Statement of Objections and minutes of the oral hearing, within the Commission and the Advisory Committee on restrictive practices and monopolies, in languages other than the original Greek version;
  - (ii) the calculation of the amount of the applicant's fine, in particular the Commission's draft Decisions presented to the Advisory Committee on restrictive

practices and monopolies, in which it is understood but cannot be proven by the applicant, that the following paragraph appears (which does not appear in the adopted Decision):

'Account should be taken of the Greek producers' argument that they were constrained by circumstances to sign the contracts with certain European producers on the sale of cement and clinker. Consequently, the Commission considers that it should not impose fines on Titan and Heracles in respect of the agreements and concerted practices relating to the purchases of Greek cement and clinker referred to in point 56.'

and

- order that the Commission pay the applicant's costs.

*Pleas in law and main arguments adduced in support:*

1. The Commission's Decisions was adopted in breach of a number of essential procedural requirements, in particular, the right to a fair hearing.
2. The applicant was denied an adequate opportunity to make its views on the objections raised against it known to the Commission. Neither the applicant's response to the Statement of Objections nor those minutes of the oral hearing which relate to interventions made by the applicant was translated from the Greek original within the Commission. Accordingly, the issues raised by the applicant in these documents were not properly taken into account.
3. The Commission's Decision was adopted in breach of Article 190 of the EC Treaty. The European Commission has failed to provide adequate reasoning to support its central conclusions, in particular, that:
  - the various arrangements to which the applicant was a party amounted to a 'single and continuous agreement',
  - the applicant 'participated indirectly' in the Cembureau agreement,
  - the purpose of the contracts in which the applicant was specifically involved (Holderbank, Lafarge, CBR, as mentioned above) was to prevent direct sales by the applicant on the European market.
4. The Commission's Decision was adopted in breach of the fundamental Community principle of non-discrimination, in that the Commission has failed to assess the applicant's circumstances individually, despite the fact that the applicant's circumstances were radically different to those of the other addressees of the Decision.