

(d) The Court of First Instance's judgment is also vitiated by a lack of reasoning and failure to respond to arguments of the Appellant.

(<sup>1</sup>) OJ C 101 of 22.4.1995, pp 10-20; C 119 of 13.5.1995, pp 13-26; C 137 of 3.6.1995, pp 23-28, 33 and 34, and C 208 of 12.8.1995, pp 26 and 27.

(<sup>2</sup>) Commission Decision 94/815/EC of 30 November 1994 relating to a proceeding under Article 85 of the EC Treaty (Cases IV/33.126 and 33.322 — Cement) (OJ 1994 L 343 of 30.12.1994, p. 1).

(iii) order the Commission to pay the costs.

*Pleas in law and main arguments*

- Error of law inasmuch as the judgment under appeal finds that the consultation with the Advisory Committee on Restrictive Practices and Abuses of Dominant Positions was properly conducted: the case-law of the Court of Justice requires that the Advisory Committee should be consulted at least orally on the amount of the fines envisaged.
- Manifest error of assessment in so far as the judgment under appeal finds that Compagnie des Ciments Belges was under the control of Ciments Français at the time of the infringement and inasmuch as the turnover of that subsidiary was not excluded from the basis of assessment on which the fine imposed on Ciments Français was calculated.
- Infringement of the principle of proportionality inasmuch as the judgment under appeal does not reduce the amount of the fine imposed on Ciments Français in proportion to the complaints against Ciments Français which were annulled by the Court of First Instance.
- Error of law inasmuch as the judgment under appeal states that the Commission was entitled to base itself on the turnover for 1992 for the purpose of calculating the fine imposed on Ciments Français: under Article 15(2) of Regulation No 17/62, the turnover which is to serve as the basis for calculation of the fine is in principle that of the business year preceding adoption of the decision. The Court of First Instance departed from that interpretation and failed to give reasons for so doing.

**Appeal brought on 26 May 2000 by Ciments Français S.A. against the judgment delivered on 15 March 2000 by the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Case T-39/95 Ciments Français S.A. v Commission of the European Communities**

**(Case C-211/00 P)**

(2000/C 247/11)

An appeal has been brought before the Court of Justice of the European Communities on 26 May 2000 by Ciments Français S.A., represented by Antoine Winckler, with an address for service in Luxembourg at the Chambers of Elvinger & Hoss, 15 Côte d'Eich, against the judgment delivered on 15 March 2000 by the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Case T-39/95 Ciments Français S.A. v Commission of the European Communities.

The appellant claims that the Court should:

- Annul in part, pursuant to Article 225 EC and Article 54 of the EC Statute of the Court of Justice, the judgment delivered on 15 March 2000 by the Court of First Instance in Case T-39/95 Ciments Français S.A. v Commission of the European Communities;
- grant the forms of order sought by Ciments Français at first instance, namely:
  - (i) annul, pursuant to Article 230 EC, the Commission decision of 30 November 1994 relating to a proceeding under [Article 81 EC] in Cases IV/33.126 and 33.322;
  - (ii) in the alternative, reduce, pursuant to Article 229 EC and Article 17 of Regulation No 17/62, the fine imposed on Ciments Français; and

**Appeal brought on 30 May 2000 by Italcementi SpA against the judgment delivered on 15 March 2000 by the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 between Cimenteries CBR SA and Others and the Commission of the European Communities**

**(Case C-213/00 P)**

(2000/C 247/12)

An appeal against the judgment delivered on 15 March by the Court of First Instance of the European Communities (Fourth

Chamber, Extended Composition) in Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 between Cimenteries CBR SA and Others and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 30 May 2000 by Italcementi SpA, represented by Cesare Lanciani, of the Milan Bar, Alberto Predieri, of the Florence Bar, Mario Siragusa, of the Rome Bar, Francesca Maria Moretti, of the Venice Bar, and Matteo Beretta, of the Bergamo Bar, with an address for service in Luxembourg at the Chambers of Elvinger, Hoss & Prussen, 2 Place Winston Churchill.

The Appellant claims that the Court should:

1. *mainly*, set aside the judgment in whole or in part:

- in so far as the Court of First Instance misapplied in respect of Italcementi the principles of infringement of the rights of defence in relation to failure to grant full access during the administrative procedure to the case-file;
- in so far as the Court of First Instance misapplied in respect of Italcementi the principles of infringement of the rights of defence in relation to failure to communicate beforehand the decision to drop objections.

2. *in the alternative*, set aside the judgment in part:

- in so far as the Court of First Instance did not find that the infringement of the rights of defence by the failure to communicate the decision to drop objections should result in the annulment of Article 4(3)(b) of the decision at issue<sup>(1)</sup> and consequently in a proportionate reduction of the fine in view of the lesser duration of the infringement;
- in so far as the Court of First Instance did not accept that there was a contradiction between the decision to drop objections and the decision at issue and did not therefore annul Article 4(3)(b) of the operative part, with all its implications so far as concerns the infringement and, therefore, also the fine;
- in so far as the Court of First Instance found that the Commission was right to attribute to Italcementi an infringement of Article 85(1) of the Treaty on the ground that it participated in an agreement concerning contracts and arrangements with Calcestruzzi, following the termination of the contract between Calcestruzzi and Titan and, in any event, after the period 3 to 15 April 1987;
- in so far as the Court of First Instance found that a sufficient statement of reasons had been provided for the decision at issue so far as concerns determination of the fine imposed on the appellant;

- in so far as the Court of First Instance endorsed the method adopted by the Commission when imposing the fine on Italcementi;
- in so far as the Court of First Instance took the view that the fact that Italcementi's participation in the ECEC and in some aspects of the exchanges of information was not contrary to Article 85(1) of the Treaty, and the consequent annulment of part of Article 2 and the whole of Article 5 of the decision at issue did not entail a proportional reduction of the fine imposed by Article 9 of the decision at issue;
- in so far as the Court of First Instance considered the infringement committed by the appellant to be serious;
- in so far as the Court of First Instance concluded that the appellant's participation lasted until the end of April 1992.

3. In any event, annul the relevant parts of the Commission decision should it uphold the present appeal.
4. Reduce the fine by the amount it may deem appropriate.
5. Refer the case back to the Court of First Instance should it decide that the nature of the case, in whole or in part, does not make it possible for the Court of Justice to give a final decision on the dispute.
6. Order the Commission to pay the costs of the proceedings at first instance and the appeal.

*Pleas and main arguments*

**Pleas in law relating to the setting aside of the judgment and the annulment of the decision**

**A. Procedure**

1. Misapplication of Community law and infringement of the rights of defence as a result of being unable to gain access to all the documents contained in the Commission's file during the course of the administrative procedure:
  - (i) Infringement of the rights of defence as regards access to the file automatically entails annulment of the decision at issue.
  - (ii) The analysis carried out by the Court of First Instance is seriously flawed by erroneous assumptions going to the merits; it is moreover entirely arbitrary and unfounded inasmuch as the Court of First Instance misapplied the principle of direct evidence, having ruled out a priori as

irrelevant any document which did not have an objective link with the charges laid against the appellant or which did not counter directly the documentary evidence adduced by the Commission and, in any event, by the manner in which the Court of First Instance ascertained whether the rights of defence had in fact been infringed on account of the improper access to the file during the administrative procedure.

(iii) Infringement of the rights of defence as regards access to the file entails the annulment of the decision at issue irrespective of whether the undertaking which stands accused is able to show that access during the administrative procedure might have led the Commission to arrive at a different conclusion.

2. Infringement of the rights of the defence, inadequate statement of reasons and contradiction with an earlier decision regarding the decision dropping the national objections communicated by letter of 27 November 1993.

## B. Substance

1. Error in law and contradiction with another part of the statement of reasons as regards assessment of the validity of the agreement on contracts and agreements signed in April 1987 with Calcestruzzi.

### Pleas in law relating to the cancellation or reduction of the fine

#### A. Pleas in law relating to the cancellation of the fine

1. Misapplication of Community law and case-law and infringement of Article 253 of the Treaty as regards assessment of the inadequacy of the statement of reasons for the decision at issue so far as concerns the fine.

2. Infringement of Article 15(2) of Regulation No 17, breach of the principle of proportionality, manifest error of assessment and inadequate statement of reasons so far as concerns the sales taken into account when calculating the fines.

3. Misapplication of Community law, breach of the principles of fairness, proportionality and non-discrimination and inadequate statement of reasons as regards assessment of the criteria used when determining the fines.

#### B. Pleas in law relating to the reduction of the fine

1. Error in law as regards failure to change the fine where the Commission measure is annulled in part.

2. Infringement of Article 15(2) of Regulation No 17 and inadequacy of the statement of reasons so far as concerns assessment of the gravity of the infringement with which Italcementi is charged.

3. Infringement of Article 15(2) of Regulation No 17 so far as concerns assessment of the duration of the infringement with which Italcementi is charged.

<sup>(1)</sup> Commission Decision 94/815/EC of 30 November 1994 relating to a proceeding under Article 85 of the EC Treaty (Cases IV/33.126 — Cement) (OJ 1994 L 343 of 30.12.1994, p. 1).

**Appeal brought on 31 May 2000 by Buzzi Unicem SpA ('Unicem') against the judgment delivered on 15 March 2000 by the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 between Cimenteries CBR SA and Others and the Commission of the European Communities**

(Case C-217/00 P)

(2000/C 247/13)

An appeal against the judgment delivered on 15 March by the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 between Cimenteries CBR SA and Others and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 31 May 2000 by Buzzi Unicem SpA, whose principal office is in Turin (Italy), represented by Cristoforo Osti, of the Rome Bar, and Alessandra Prastaro, of the Lecce Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe.