

In support of its claims, the applicant association puts forward the following pleas and arguments:

- The fiscal measures in favour of mergers between banking institutions are not selective and do not constitute ad hoc aid. It should be borne in mind in that regard that the introduction of fiscal incentives for mergers between banking institutions, as provided for under the Italian rules since 1990, the primary aim of which is to facilitate the privatisation of the sector, is solely intended to improve the functioning and flexibility of the tax rules with specific reference to the reality of the developments taking place in the Italian banking system.
- The fiscal measures provided for in favour of transfers of capital goods and equipment to institutions do not constitute aid, inasmuch as they do not involve any effective waiver by the State of the collection of tax revenues.
- Neither of those types of fiscal measures distorts or threatens to distort competition. No preliminary investigation whatever has been carried out by the Commission in relation to this point. It must be emphasised in that regard that, compared with their competitors in the Community, Italian banks are additionally penalised by a higher tax burden which cannot easily be reconciled with the tax regimes applying in other Member States.
- The fiscal measures adopted in relation to mergers between banking institutions do not affect trade between Member States.
- No preliminary investigation has been carried out, and no statement of reasons has been given as to why this case does not concern de minimis aid.
- The defendant's refusal to carry out any specific assessment of the Italian rules in question meant that it was not able to gain a better understanding of the scope and content of those rules; this would probably have enabled it to ascertain that they complied with Article 87(1) and (3) EC and correctly to assess the appropriateness of their intended purpose. In actual fact, the Commission understood neither the content nor the scope of the Italian rules forming the subject-matter of the case.
- In the contested decision, the Commission, when assessing the possible incompatibility of certain provisions of the law in question for the purposes of Article 87(1) EC, wholly failed to take into account the significance, dealt with at length in the procedure before the Commission, of the common validity and continuity of the 'Legge Amato' (Law No 218 of 30 July 1990) and the 'Legge Ciampi' in the context of the privatisation of the Italian banking system, which was initiated by the first of those

laws. In that regard, it should be borne in mind that the 'Legge Amato' had been expressly considered by the defendant on various occasions in connection with Sicilian banks and the Banco di Napoli. In the latter connection, the applicant pleads infringement of the principles of the protection of legitimate expectations, proportionality and legal certainty.

**Action brought on 22 February 2002 by Groupe Danone
against the Commission of the European Communities**

(Case T-38/02)

(2002/C 97/29)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 February 2002 by Groupe Danone, established in Paris, represented by Antoine Winckler and Marc Waha, lawyers.

The applicant claims that the Court should:

- annul the decision in issue, pursuant to Article 230 of the EC Treaty;
- alternatively, reduce the fine imposed on the applicant by the decision, pursuant to Article 229 of the EC Treaty;
- order the Commission to pay the costs.

Pleas in law and main arguments

The decision contested in the present case concerns two agreements relating to the Belgian beer market. The first was concluded between Interbrew N.V. and Brouwerijen Alken-Maes N.V. It included, in particular, a general 'non-aggression pact', an agreement regarding retail prices and a market-sharing arrangement in the hotel/restaurant/café sector. The Commission has not censured Alken-Maes for having participated in that agreement, but only its majority shareholder at the time, namely the applicant, on account of its own participation in the agreement and the fact that it formed an economic entity with Alken-Maes.

The defendant has also established the existence of a second agreement, concerning beers sold under distributors' brand names, concluded between Interbrew, Alken-Maes, Haacht and Martens, involving market-sharing and collusion in respect of price-fixing. As regards that second agreement, the contested decision does not censure the applicant in relation to the acts of its former subsidiary, since it was not involved therein.

The applicant does not challenge the basic findings underlying the contested decision. In support of its claims, it puts forward the following pleas in law and main arguments:

- The Commission has infringed the principles of proportionality and equal treatment by taking the sum of 25 million EUR as the 'basic amount' of the fine.
- The decision is factually unfounded, inasmuch as it finds that the infringement lasted from 28 January 1993 to 28 January 1998. In so finding, the Commission applied too high a multiplier to the amount of the fine.
- The decision is factually unfounded in so far as it finds that the applicant forced Interbrew to participate in the agreement.
- The decision is unfounded in law and in fact, in that there was no justification for increasing the fine on account of the fact that the applicant had already been found on two earlier occasions to have acted unlawfully. In that regard, the Commission has infringed the principles of 'nulla poena sine lege', 'ne bis in idem' and legal certainty.
- The decision is unfounded in law and in fact, inasmuch as it reduces the fine by only 10 % on account of mitigating circumstances. It omitted to take into account the influence of the price control system and the tradition of concerted practices in the brewing sector, the fact that the agreement had no effect on the market, the dependent situation of Alken-Maes by comparison with the dominant position occupied by Interbrew, the financial difficulties facing Alken-Maes and the crisis situation prevailing during the period in question.
- The decision is unfounded in law and in fact, inasmuch as it finds that the applicant contested the facts alleged against it. In that respect, the applicant should have been entitled to a substantial reduction in the fine.

The applicant company also pleads violation of its rights of defence and failure on the part of the Commission to comply with its obligation to provide a statement of reasons.

Action brought on 25 February 2002 by Jungbunzlauer AG against the Commission of the European Communities

(Case T-43/02)

(2002/C 97/30)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 February 2002 by Jungbunzlauer AG, of Basle (Switzerland), represented by R. Bechtold, M. Karl and U. Soltész, lawyers.

The applicant claims that the Court should:

- annul the Commission's decision of 5 December 2001 (Case COMP/E-1/36.604 — Citric acid);
- alternatively, reduce the fine imposed in Article 3 of the decision;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The subject-matter of the dispute is the Commission's decision of 5 December 2001 (Case COMP/E-1/36.604 — Citric acid) in which the Commission found that the applicant and four other undertakings had infringed Article 81(1) EC and Article 53 of the EEA Agreement, in that they had participated in a continuing agreement and/or a concerted practice in the citric acid sector. A fine of EUR 17,64 million was imposed on the applicant.

First, the applicant claims that the decision was directed to the wrong addressee. The decision should, in fact, have been directed to Jungbunzlauer Ladenburg GesmbH, an associate company of the applicant.

The applicant claims that the Commission did not adequately establish the actual effects on the market and that it refused to take into account, in the applicant's favour, the fact that Jungbunzlauer GesmbH played a special role in the cartel.