Action brought on 17 April 2002 by Torraspapel SA against the Commission of the European Communities

(Case T-129/02)

(2002/C 169/65)

(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 17 April 2002 by Torraspapel SA, represented by Mr Onno W. Brouwer and Mr Francisco Cantos of Freshfields Bruckhaus Deringer, Brussels (Belgium).

The applicant claims that the Court should:

— annul Article 1 of the contested Decision in so far as it establishes an infringement of Article 81, paragraph 1, of the Treaty by the applicant in the period from 1 January 1992 to September 1993; and reduce the fine accordingly;

— substantially reduce the amount of the fine imposed on the applicant in Article 3 of the contested Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested Decision in the present case is the same as in case T-109/02 Bolloré/Commission [1]. By this Decision, the Defendant found that the applicant and ten other manufacturers of carbonless paper had infringed Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement by participating in a complex of agreements and concerted practices by which they fixed price increases, allocated sales quotas and fixed market shares and set up machinery to monitor the implementation of the restrictive agreements.

In support of its arguments, the applicant submits that the Commission has wrongly applied Article 81(1) of the Treaty and violated the principle of presumption of innocence, as well as an essential procedural requirement, as it has not sufficiently proven that the applicant committed an infringement of the above-mentioned provision from January 1992 until September 1993. It is stressed in this regard that such an approach does not mean that the applicant would recognise that there was an infringement concerning the period thereafter. It has however chosen not to lodge an appeal against the entire decision of the Commission.

The Commission has also breached Article 15(2) of Regulation 17/62 in that it has wrongly classed the alleged infringement as 'very serious'. Firstly, in defining the alleged cartel as 'price fixing market sharing practices', the Commission seeks to confer a disproportionate importance on the alleged market allocation practices, misrepresenting their gravity. Secondly, in classing the alleged infringement as 'very serious', the Commission does not take account of the difference between agreements fixing prices, which lead to uniform prices, and other price agreements, which do not lead to uniform prices. Moreover, the Commission has failed properly to examine the relative gravity of the infringement allegedly committed by the applicant. In short, the defendant has failed to take into consideration the fact that the applicant, as it claims, did not apply the price increases allegedly fixed and thus defeated the anti-competitive effects of the alleged cartel; in addition the Commission wrongly assessed the effective capacity of the applicant to cause damage to competition.

(1) Not yet published in the OJ.

Action brought on 17 April 2002 by Kronopoly GmbH & Co. KG against the Commission of the European Communities

(Case T-130/02)

(2002/C 169/66)

(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 17 April 2002 by Kronopoly GmbH & Co. KG, Heiligengrabe (Germany), represented by R. Nierer, lawyer.

The applicant claims that the Court should:

— annul the Commission's decision of 5 February 2002 not to correct the decision of 3 July 2001 on planned aid No N 813/2000;

— order the defendant to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

In the contested decision, the Commission established a competitive factor of 0,75 in respect of the notified aid. In the

applicant's view, the competitive factor should have been 1. The German Government therefore applied for an increase of the notified aid and requested a corrective adjustment of the factor from 0,75 to 1. The Commission refused that application and informed the German Government that it did not regard it as possible to make the requested adjustment.

In its application, the applicant submits that, in adopting its decision of 5 February 2002, the Commission failed to observe the principle of collegiality and the duty to state reasons, acted in breach of, first, essential formal and procedural requirements and, second, a provision to be applied in implementing the EC Treaty and made improper use of its discretion.

The failure to comply with essential formal requirements consists in, first, the insufficient reasons on which the decision was based. Furthermore, the Commission made improper use of its discretion by misinterpreting the underlying facts in such a way that it avoided opening the investigation procedure even though it should, at least, have conducted a preliminary examination. Thus, the Commission failed to comply with the procedural requirements laid down in Regulation No 659/1999, which are intended to safeguard the rights of the Member States and of the applicant. The applicant's right to a hearing was restricted.

Moreover, the applicant submits that the Commission failed to observe and/or misapplied the content of the provisions of the multisectoral framework on regional aid and that it wrongly and incompletely assessed the underlying facts. This is shown, in particular, by the fact that the Commission failed to recognise the possibility of amending approved aid without withdrawing it.

Finally, the applicant contends that this is a case of unequal treatment because, in another decision adopted at the same time on planned aid in the same sector, the capacity utilisation rate of the relevant NACE class was correctly taken into account whereas it was wrongly disregarded in the contested decision.

Action brought on 23 April 2002 by Travelex Global and Financial Services Limited and Interpayment Services Limited against the Commission of the European Communities

(Case T-131/02)

(2002/C 169/67)

(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 April 2002 by Travelex Global and Financial Services Limited and Interpayment Services Limited, represented by Mr Claude Delcorde of Dechert Price & Rhoads, London (United Kingdom).

The applicant claims that the Court should:

— order that, pursuant to the second paragraph of Article 288 EC, the Commission make good the damage caused to the applicants by paying them the sum of £ 25,5 million;

— order that the Commission pay the costs of this application.

Pleas in law and main arguments

The terms of this application are substantially similar to those of the application lodged in Case T-195/00 Thomas Cook and Interpayment Services -v- Commission [1].

[1] OJ C 302, of 21.10.00, p. 24.

Action brought on 25 April 2002 by Greencore Group plc against the Commission of the European Communities

(Case T-135/02)

(2002/C 169/68)

(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 25 April 2002 by Greencore Group plc, represented by Mr Alexander Böhlke of Kemmler Rapp Böhlke, Brussels (Belgium).

The applicant claims that the Court should:

— annul Commission Decision BUDG/C-2/RVT/49076 of 11 February 2002;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the current action, the applicant challenges the Decision to refuse to pay interest on part of the competition fine imposed