

**Action brought on 4 October 2002 by Westfalen Gassen Nederland B.V. against the Commission of the European Communities**

(Case T-303/02)

(2002/C 305/54)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 October 2002 by Westfalen Gassen Nederland B.V., established at Deventer (Netherlands), represented by J.J.M. Essers, lawyer.

The applicant claims that the Court should:

- (1) primarily, annul Articles 1 and 3 of the Commission's decision of 24 July 2002 in case COMP/E-3/36.700 — Industrial and medical gases, imposing on the applicant a fine of EUR 0.43 million for infringement of Article 81(1) EC;
- (2) alternatively, annul Article 1 of that decision and substantially reduce the fine imposed by Article 3 thereof;
- (3) order the Commission to pay the costs.

*Pleas in law and main arguments*

The applicant has been active on the Netherlands market since 1989. It imports industrial gases from Germany from its parent company, Westfalen AG, or purchases them from other producers.

By the contested decision, the Commission found that the applicant had participated in concerted practices relating to price increases, moratoria and minimum prices in respect of the Netherlands market.

In support of its claim, the applicant states that the Commission has produced no proof, or no sufficient proof, of any infringement by it of Article 81(1) EC. Thus, the Commission has not proved, or has not sufficiently proved, that the applicant took part in the concerted practices.

Furthermore, according to the applicant, the Commission has failed to take account of the fact that, by virtue of the attitude adopted it at meetings of the Vereniging van Fabrikanten van Industriële Gassen (Association of Manufacturers of Industrial Gases), smaller undertakings were excluded from further involvement in the discussions concerning the concerted practices at issue. The applicant's attitude was not passive; on the contrary, it actively opposed those practices. According to the applicant, the attitude thus adopted by it in fact had an effect which was beneficial to competition.

The applicant further claims that the Commission is mistaken as to the duration of the infringement allegedly committed by it.

Finally, the applicant claims that the fine imposed is contrary to the principles of proportionality and equality. According to the applicant, having regard to the turnover figure at the time of the infringement, it has in relative terms suffered the heaviest penalty, and the Commission, when fixing the amount of the fine, proceeded on the basis of incorrect factual assumptions.

**Action brought on 7 October 2002 by NV Hoek Loos against the Commission of the European Communities**

(Case T-304/02)

(2002/C 305/55)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 October 2002 by NV Hoek Loos, established at Schiedam (Netherlands), represented by J.J. Feenstra and B.F. van Harninxma thoe Slooten, lawyers.

The applicant claims that the Court should:

- (1) primarily, annul Article 3 of the contested decision, in so far as it concerns the fine imposed on the applicant;
- (2) alternatively, in the exercise of its unfettered jurisdiction and applying justice in an appropriate manner, substantially reduce the fine imposed on the applicant;
- (3) order the Commission to pay the costs.