

The applicants claim that the Court should:

- annul Article 1 insofar as it relates to the companies listed in Article 1 (h), (i) and (j) and annul Article 2 (f) of the Commission Decision dated 3 September 2004 and amended by written procedure on 20 October 2004 in case COMP/E-1/38.069-copper plumbing tubes;
- alternatively, reduce the fines imposed on the applicants;
- order the Commission to pay the costs.

*Pleas in law and main arguments*

In the contested decision, the Commission found an infringement of Article 81(1) EC and Article 53(1) EEA by several undertakings in the copper plumbing sector. The infringement comprised three separate manifestations: arrangements among the so-called SANCO producers, arrangements among the so-called WICU and Cuprotherm producers and arrangements among the broader group of copper plumbing tube producers. According to the decision, the applicants were not aware or could not have reasonably foreseen the SANCO arrangements and the WICU and Cuprotherm arrangements.

In support of their application, the applicants submit a violation of the principle of non-discrimination. According to the applicants, the Commission favoured, because of the way it conducted its investigation, some of the undertakings. The applicants state that they were the last companies to receive a request for information and therefore were also the last to apply for leniency, resulting in only a 10 % reduction of the fine on that ground.

The applicants furthermore submit that the Commission erred in finding that the SANCO arrangements were not significantly tighter than the arrangements in the broader group. They also submit that the absence of differentiation at the level of the fines between the participants in the SANCO arrangements and participants in the broader group of producers, violates the principle of non-discrimination and the principle according to which responsibility for violating competition law is personal in nature.

The applicants also contest the conclusion to impose the same fine on the applicants and the producers that participated in the broader arrangement and the WICU and Cuprotherm arrangements. The applicants submit that this conclusion violates the principle of non-discrimination, the principle according to which responsibility for violating competition law is personal in nature and that the decision is not sufficiently reasoned on this point.

The applicants furthermore claim that the Commission violated the principle of non-discrimination and made a manifest error in finding that the applicants participated without interruption in the arrangements while no continuity could be established in respect of certain other undertakings. According to the applicants, their situation is identical to that of those other undertakings. The applicants also invoke in this respect a violation of their rights of defence in that the Commission relied in the decision on elements that had not been taken into consideration in the statement of objections.

Finally, the applicants submit a violation of the principle of proportionality in the determination of the fines.

**Action brought on 18 January 2005 by the Italian Republic against the Commission of the European Communities**

**(Case T-26/05)**

(2005/C 69/46)

*(Language of the case: Italian)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 January 2005 by the Italian Republic, represented by Antonio Cingolo, avvocato dello Stato.

The applicant claims that the Court should:

1. annul:

- the memorandum of 9 November 2004 SPD – Emilia-Romagna;
- the memorandum of 10 November 2004 NOP Research;
- the memorandum of 12 November 2004 SPD Piemonte, PEP Calabria, PEP Molise, SPD Toscana, PEP Sicilia, SPD Marche, SPD Friuli-Venezia Giulia, PEP Campania, SPD Liguria;
- the memorandum of 16 November 2004 SPD Lombardia, SPD Veneto;
- the memorandum of 17 November 2004 SPD Lazio;
- the memorandum of 18 November 2004 NOP Local enterprise development;

- the memorandum of 22 November 2004 PEP Sicilia;
- the memorandum of 24 November 2004 PEP Puglia;
- the memorandum of 29 November 2004 SPD IP Trento;
- the memorandum of 16 December 2004 PEP Puglia;
- the memorandum of 17 December 2004 PEP Campania;
- the memorandum of 10 January 2005 NOP Local enterprise development.

2. order the Commission to pay the costs.

*Pleas in law and main arguments*

The pleas in law and main arguments are the same as those put forward in Case T-345/04 *Italian Republic v Commission* <sup>(1)</sup>.

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<sup>(1)</sup> OJ C 262 of 23.10.2004, p. 55.

**Removal from the Register of Case T-189/04 <sup>(1)</sup>**

(2005/C 69/47)

*(Language of the case: French)*

By order of 16 December 2004, the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-189/04, *Christian van der Haegen v European Economic and Social Committee*.

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<sup>(1)</sup> OJ C 217 of 28.8.2004.