

The applicants claim that the Court should:

- annul Articles 1(a), 1 (b) and 1 (c) of the Commission's Decision of 3 September 2004 (Case COMP/E-1/38.069 - Copper Plumbing Tubes) insofar as these articles relate to the periods from 1 July 1995 until 27 August 1998 and from 10 December 1998 until 7 October 1999;
- amend Article 2 of the contested decision, and reduce the fine imposed on the applicants;
- order the Commission to pay the costs.

Pleas in law and main arguments

In the contested decision the Commission found that the applicants, among other undertakings, infringed Article 81(1) EC by participating in a complex of agreements and concerted practices consisting of price fixing and market sharing in the copper plumbing tubes sector.

In support of their application the applicants claim that the Commission committed an error of law in the application of Article 81(1) EC when concluding that the applicants participated in one single continuous infringement which lasted from 3 June 1998 until 22 March 2001. The applicants further argue that even if their infringement should be qualified as single and continuous, the Commission infringed the principle of proportionality by not taking into account the applicants' reduced participation during a substantial period of that infringement. The applicants also claim that the Commission erroneously considered as inapplicable to the applicants' case the rules on limitation periods and that, therefore, no fine should have been imposed for infringements that ceased prior to 22 March 1996 given that the Commission's investigation started on 22 March 2001. Finally, they claim that the Commission did not correctly apply its Leniency Notice and the 1998 Guidelines on the method of setting fines in their regard, since the reduction of the fine granted by the Commission does not correctly reflect the applicants' co-operation. In the same context, the applicants also invoke a violation of the principle of equal treatment on the grounds that they were granted the same reduction as another participant to the infringement in question even though the applicants' cooperation went further than that of the other company.

Action brought on 21 January 2005 by Outokumpu OYJ and Outokumpu Copper Products OY against the Commission of the European Communities

(Case T-20/05)

(2005/C 82/65)

(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 21 January 2005 by Outokumpu OYJ, established in Espoo (Finland) and Outokumpu Copper Products OY, established in Espoo (Finland), represented by J. Ratliff, Barrister and F. Distefano and J. Luostarinen, lawyers.

The applicants claim that the Court should:

- annul Article 2 of the Commission's Decision of 3 September 2004 (Case COMP/E-1/38.069 - Copper Plumbing Tubes) insofar as it relates to the amount of the fine imposed on the applicants;
- reduce the fine imposed on the applicants in the said decision under the Court's jurisdiction;
- order the Commission to pay the costs of the proceedings including those of the applicants.

Pleas in law and main arguments

In the contested decision the Commission found that the applicants, among other undertakings, infringed Article 81(1) EC by participating in a complex of agreements and concerted practices consisting of price fixing and market sharing in the copper plumbing tubes sector.

In support of its application the applicants claim first of all that the Commission erred in law when it increased the fine imposed on the applicants by 50 % for recidivism, based on the fact that the applicants had already been found to have committed a similar infringement in the case of stainless steel. In this context the applicants claim that the Commission violated Article 23 of Regulation 1/2003⁽¹⁾ as well its own 1998 Fining Guidelines, violated the general principles of proportionality and equal treatment and committed a manifest error of assessment.

The applicants further claim that the Commission erred both in law and in its assessment of the facts when it increased the fine imposed on the applicants by 50 % for deterrence. In this context the applicants submit that the Commission assessed such deterrent effects incorrectly and contrary to Article 23 of Council Regulation 1/2003, its own 1998 Fining Guidelines as well as the general principles of fining, punishment and proportionality, given that the applicants only became larger than the other companies involved in the infringement in question through acquisitions at the very end or even after the infringement. In the same context the applicants submit that the Commission erred by considering only turnover instead of the full circumstances of the applicants.

Finally, the applicants claim that the Commission manifestly erred in law by taking into account, for fining purposes, not only the producers 'conversion margin' for processing copper metal into plumbing tubes, but also the underlying copper metal turnover, which was not part of any unlawful co-operation. According to the applicants, this error has resulted in a disproportionately high fine.

(¹) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4/1/2003 p. 1.

Action brought on 21 January 2005 by Halcor Metal Works S.A. against the Commission of the European Communities

(Case T-21/05)

(2005/C 82/66)

(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 21 January 2005 by Halcor Metal Works S.A., established in Athens (Greece), represented by I. S. Forrester, Barrister and A. P. Schulz and A. Komninos, lawyers.

The applicant claims that the Court should:

- annul Articles 1(f) and 2(d) of the decision to the extent that a fine is imposed upon Halcor;

- in the alternative, impose such lower amount as may appear appropriate to the Court in the exercise of its unlimited discretion pursuant to Article 229 EC;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests the fine imposed on it by the Commission's Decision of 3 September 2004 relating to a proceeding pursuant to Article 81(1) EC in Case Comp/E-1/38-069 finding three separate infringements in the copper plumbing tube sector.

In support of its application, the applicant submits in the first place that its conduct did not deserve a fine. According to the applicant, its conduct did not involve behaviour worthy of a fine under Article 81 EC, in that it was subject to coercion from the other addressees of the decision and in that its participation in the cartel, as an export- and growth-oriented undertaking, was reluctant and passive.

The applicant also submits that the starting point of its fine was manifestly erroneously set and infringes the principle of equal treatment. The applicant states that, whereas the decision accuses other addressees of engaging in three separate infringements, the applicant is accused of engaging in only one while the basic amount of the fine was calculated in the same manner for all addressees. The applicant also claims that it did not reinforce the arrangements and that the geographical scope of the infringement in the decision wrongly included Greece.

The applicant furthermore submits that the increase for duration constitutes a manifest error of appreciation and an error in law.

Finally, the applicant claims that the fine imposed on it was disproportionate by comparison to the fines imposed on the other addressees of the decision and in the light of the applicant's particular circumstances. The applicant refers in this respect to its voluntarily termination of its attendance at the meetings in 1999, two years before the Commission heard allegations about the cartel, to the short duration of its attendance at the meetings, to its passive presence and to the fact that it furnished the Commission with complete documentation on which the statement of objections and the decision were based.