

Action brought on 18 July 2006 — FMC v Commission**(Case T-197/06)**

(2006/C 212/76)

*Language of the case: English***Parties**

Applicant: FMC Corporation (Philadelphia, USA) (represented by: C. Stanbrook, Q.C., and Y. Virvilis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission Decision C(2006) 1766 final of 3 May 2006, in so far as it applies to FMC Corporation; and
- in the alternative reduce the fine imposed on FMC Corporation; and
- order the Commission to bear the costs of these present proceedings.

Pleas in law and main arguments

The applicant seeks partial annulment of the Commission's Decision C(2006) 1766 final of 3 May 2006 in Case COMP/F/38.620 — Hydrogen Peroxide and Perborate, by which the Commission found that the applicant had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by participating in a cartel, which consisted mainly of exchanges between competitors of information on prices and sales volumes, agreements on prices, agreements on reduction of production capacity in the EEA and monitoring of the anti-competitive arrangements.

The applicant invokes two pleas in law in support of its application and contends in general that it is not liable for the infringements of its subsidiary Foret as it did not exercise a decisive influence over the subsidiary.

Firstly, the applicant claims that the contested decision is inadequately reasoned.

Secondly, the applicant submits that the contested decision is flawed both in law and in fact as:

- a) the Commission's conclusions were based on a misconstruction of the evidence, on wrongful discrimination in giving different weight to different sources of oral evidence, and generally on a manifest error of assessment;
- b) the Commission used the wrong legal test of control for the purposes of determining the applicant's responsibility for the infringement of Foret;
- c) the Commission used evidence which did not relate to the period of the alleged infringement; and

- d) the Commission used evidence which it had not notified to the applicant as forming the basis of the case against the company, thereby denying the applicant the opportunity of exercising its rights of defence.

Action brought on 17 July 2006 — Akzo Nobel and Others v Commission**(Case T-199/06)**

(2006/C 212/77)

*Language of the case: English***Parties**

Applicants: Akzo Nobel NV (Arnhem, Netherlands), Akzo Nobel Chemicals Holding AB (Nacka, Sweden), Eka Chemicals AB (Bohus, Sweden) (represented by: C. Swaak, N. Neij, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the fine imposed on the applicants in the contested decision, or, in subsidiary order, to increase by 10 % the 40 % reduction granted under the Leniency Notice;
- order the Commission to pay its own costs and those of the applicants.

Pleas in law and main arguments

The applicants seek the annulment of the fine imposed on them by Commission Decision C(2006) 1766 final of 3 May 2006 in Case COMP/F/38.620 — Hydrogen Peroxide and Perborate, by which the Commission found that the applicants had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by participating in a cartel, which consisted mainly of exchanges between competitors of information on prices and sales volumes, agreements on prices, agreements on reduction of production capacity in the EEA and monitoring of the anti-competitive arrangements. The two applicants Akzo Nobel Chemicals Holding AB and Akzo Nobel NV are held jointly and severally liable for the infringement committed by the applicant Eka Chemicals AB ('Eka').

The applicants submit that the Commission has breached the obligation to state reasons pursuant to Article 253 EC in not stating any reason for granting only a 40 % reduction of the fine within a band of 30-50 % despite the far-reaching compliance of Eka's cooperation with the criteria of the Leniency Notice ⁽¹⁾.

In the alternative, the applicants seek an increase of 10 % of the 40 % reduction of the fine granted under the Leniency Notice on the ground that the Commission misapplied the Leniency Notice in that Eka was not granted the highest reduction available within the relevant band, notwithstanding the fact that its cooperation fully met the criteria established at point 23, second paragraph, of the Leniency Notice. According to the applicants, the Commission therefore violated the applicant's legitimate expectations.

Furthermore, the applicants contend that the Commission violated the principle of equal treatment in that it treated:

- i) similar situations, i.e. that of Eka and Arkema who's cooperation fully met the criteria in point 23 of the Leniency Notice, in a different manner by granting the maximum reduction available within the relevant band only to Arkema, and
- ii) different situations, i.e. that of Eka and Solvay, in a similar manner by granting both a reduction of the fine which is not the highest reduction available under the relevant band even though Eka, according to the applicants, had contributed more valuable and timely cooperation than Solvay.

(¹) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3)

**Order of the Court of First Instance of 29 June 2006 —
UNIPOR-Ziegel-Marketing v OHIM-Dörken (DELTA)**

(Case T-159/05) (¹)

(2006/C 212/78)

Language of the case: German

The President of the Fifth Chamber has ordered that the case be removed from the register.

(¹) OJ C 171, 9.7.2005.

**Order of the Court of First Instance of 27 June 2006 —
Marker Völkl v OHIM — Icon Health & Fitness Italia
(MOTION)**

(Case T-217/05) (¹)

(2006/C 212/79)

Language of the case: German

The President of the Fifth Chamber has ordered that the case be removed from the register.

(¹) OJ C 205, 20.8.2005.

**Order of the Court of First Instance of 5 July 2006 —
Deutsche Telekom v OHIM (Alles, was uns verbindet)**

(Case T-18/06) (¹)

(2006/C 212/80)

Language of the case: German

The President of the Fourth Chamber has ordered that the case be removed from the register.

(¹) OJ C 86, 8.4.2006.

**Order of the Court of First Instance of 6 July 2006 —
Cofira-Sac v Commission**

(Case T-43/06) (¹)

(2006/C 212/81)

Language of the case: Italian

The President of the Second Chamber has ordered that the case be removed from the register.

(¹) OJ C 86, 8.4.2006.