

COURT OF FIRST INSTANCE

Assignment of Mr Wahl and Mr Prek to Chambers

(2006/C 261/36)

At its plenary meeting on 9 October 2006, the Court of First Instance decided, following the taking up of their duties by Mr Wahl and Mr Prek, to amend as follows the decision of the plenary meeting of 5 July 2006 on the assignment of Judges to Chambers:

For the period from 9 October 2006 to 31 August 2007, the following are assigned:

to the First Chamber (Extended Composition), sitting with five Judges:

Mr Vesterdorf, President, Mr Cooke, Mr García-Valdecasas, Ms Labucka and Mr Prek, Judges;

to the First Chamber, sitting with three Judges:

Mr Cooke, President of the Chamber, Mr García-Valdecasas, Ms Labucka and Mr Prek, Judges;

to the Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Legal, President of the Chamber, Ms Wiszniewska-Białecka, Mr Vadapalas, Mr Moavero Milanesi and Mr Wahl, Judges;

to the Fourth Chamber, sitting with three Judges:

Mr Legal, President of the Chamber

a) Mr Vadapalas and Mr Wahl, Judges

b) Ms Wiszniewska-Białecka and Mr Moavero Milanesi, Judges

Action brought on 4 August 2006 — Total and Elf Aquitaine v Commission**(Case T-206/06)**

(2006/C 261/37)

*Language of the case: French***Parties**

Applicants: Total SA and Elf Aquitaine (Courbevoie, France) (represented by: E. Morgan de Rivery, lawyer, and S. Thibault-Liger, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— principally, annul Articles 1(c) and (d), 2(b), 3 and 4 of Commission Decision C(2006) 2098 final of 31 May 2006;

— in the alternative, amend Article 2(b) of Commission Decision C(2006) 2098 final of 31 May 2006, in so far as it imposes jointly and severally on Arkema SA, Altuglas International SA and Altumax Europe SAS a fine of EUR 219.13125 million, for which Total SA and Elf Aquitaine are held jointly and severally liable for EUR 140.4 million and EUR 181.35 million respectively, and reduce the amount of the fine in question to an appropriate level;

— in any event, order the Commission to pay all the costs.

Pleas in law and main arguments

By the present action, the applicants seek the annulment in part of Commission Decision C(2006) 2098 final of 31 May 2006, by which the Commission found that the undertakings to which the decision was addressed, which included the applicants, infringed Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.645 — Methacrylates) by participating in a complex of agreements and concerted practices in the methacrylates sector consisting in discussions on prices, the conclusion, implementation and monitoring of price agreements, exchanges of commercially important information and confidential information on markets and/or undertakings as well as the participation in regular meetings and other contacts to facilitate the infringement. In the alternative, they seek the reduction of the amount of the fine imposed on their subsidiary for which they are held jointly and severally liable.

The main claim is based on nine pleas for annulment.

The first plea alleges an infringement of the rights of the defence and the principle of the presumption of innocence. The applicants submit that the contested decision was adopted following an administrative procedure during which they could not mount a useful defence to the extent that the Commission did not discharge its burden of proof, thus ignoring the principle of equality of arms.

In the second plea, they submit that the contested decision ignored the obligation to state reasons, which is made even greater, according to the applicants, by the alleged novelty of the position adopted by the Commission. They point out that the contested decision, in so far as it censures them for the infringement at issue committed by their subsidiary, bases the imputation of responsibility solely on the assumption of a determining influence of the applicants on their subsidiary on the ground that they hold virtually all of the subsidiary's share capital, without any consideration of facts that might support or refute this assumption. Furthermore, the applicants submit that the contested decision contains a number of contradictions that result from confusion between the concept of an undertaking/economic entity responsible for an infringement and the concept of a legal entity to which a decision is addressed. In the context of this plea, the applicants also complain that the Commission failed to respond sufficiently to their arguments regarding the independence of their subsidiary.