Appeal brought on 5 December 2006 by CAS Succhi di Frutta SpA. against the judgment delivered on 13 September 2006 in Case T-226/01 CAS Succhi di Frutta SpA v Commission

(Case C-497/06P)

(2007/C 42/16)

Language of the case: Italian

Parties

Appellant: CAS Succhi di Frutta SpA (represented by: F. Sciaudone, R. Sciaudone and D. Fioretti, Avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Annul the judgment under appeal and refer the case back to the Court of First Instance so that it may give a ruling on the merits in the light of the information provided by the Court of Justice;

— order the Commission to pay the costs of the present proceedings and of the proceedings at first instance relating to Case T-226/01.

Pleas in law and main arguments

The pleas in law put forward challenging the judgment of the Court of First Instance may be divided into four categories, which relate to: the significance of the judgment in Case C-496/99 P *Commission* v *CAS*; the substitution of fruit; the coefficients of substitution; the costs incurred by the appellant in arguing its case.

With regard to the significance of the judgment delivered in Case C-496/99 P *Commission* v *CAS*, the appellant alleges: distortion and misrepresentation of the arguments put forward by the appellant on the significance of the judgment in Case T-226/01 *Commission* v *CAS*; breach of the principle of the authority of res judicata; misrepresentation of the action for damages referred to in the judgment in *Commission* v *CAS*; an error in the interpretation of the conditions under which an action for damages may be brought.

With regard to the substitution of fruit, the appellant alleges: a failure to provide adequate reasoning in relation to the loss suffered as a result of the substitution of the fruit and manifest error of assessment of the appellant's arguments concerning the unlawfulness of the tendering procedure; an error concerning the legal significance of the substitution of the fruit in the context of the mechanism of the tendering procedure; breach of the principle of the authority of res judicata in relation to the date when it was known with certainty that substituted fruit was to be received; distortion of the clear sense of the evidence in the case-file and failure to give adequate reasons concerning the advantages resulting from the substitution of fruit and the appellant's knowledge as of March 1996; infringement of procedural rules, manifest distortion of evidence and breach of the general principles relating to the burden of proof.

With regard to the coefficients of substitution, the appellant claims; an incorrect assessment of the quantities of fruit to be taken into account in calculating the loss.

Lastly, with regard to the costs incurred in defending its case, the appellant claims; breach of the principle of the right to compensation for loss relating to the costs of technical and legal assistance and infringement of the principle of compensation for the expenses incurred in participating in the tendering procedure.

Reference for a preliminary ruling from the Giudice di Pace di Genova (Italy) lodged on 11 December 2006 — Corporación Dermoestética SA v To Me Group Advertising Media

(Case C-500/06)

(2007/C 42/17)

Language of the case: Italian

Referring court

Giudice di Pace di Genova

Parties to the main proceedings

Applicant: Corporación Dermoestética SA

Defendant: To Me Group Advertising Media SRL

Questions referred

1. Is it incompatible with Article 49 of the EC Treaty for national legislation, such as that under Articles 4, 5 and 9a of Law No 175 of 1992 and Ministerial Decree No 657 of 16 September 1994, and/or administrative practices to prohibit the broadcasting on national television of advertisements for medical and surgical treatments carried out in private health care establishments duly authorised for that purpose, even though that same advertising is permitted on local television networks, and, at the same time, to impose, in relation to the broadcasting of those advertisements, a ceiling on expenditure of 5 per cent of declared income for the preceding year?

2. Is it incompatible with Article 43 of the EC Treaty for national legislation, such as that under Articles 4, 5 and 9a of Law No 175 of 1992 and Ministerial Decree No 657 of 16 September 1994, and/or administrative practices to prohibit the broadcasting on national television of advertisements for medical and surgical treatments carried out in private health care establishments duly authorised for that purpose, even though that same advertising is permitted on local television networks, and, at the same time, to require, in relation to the broadcasting of those advertisements, prior authorisation from each individual municipality and the opinion of the provincial professional association, and to impose a ceiling on expenditure of 5 per cent of declared income for the previous year?

3. Is it contrary to Articles 43 and/or 49 of the EC Treaty for the broadcasting of advertisements which provide information on medical and surgical treatments of an aesthetic nature in private health care establishments, duly authorised for that purpose, to be made subject to additional prior authorisation by the local authorities and/or professional associations?

4. By adopting a code of conduct which lays down limits on the advertising of the health care professions and by construing the legislation in force concerning the advertising of medical services in a manner which considerably restricts the right of doctors to advertise their own activities, both measures being binding on all doctors, have the National Federation of Associations of Doctors, Surgeons and Dentists (FNOMCeO) and the associations of group practices restricted competition beyond what is permitted under the relevant national legislation and in breach of Article 81(1) EC?

5. In any event, is the interpretative practice adopted by the FNOMCeO incompatible with Articles 3(g), 4, 98, 10, 81 and, possibly, Article 86 of the EC Treaty in so far as the practice is permitted by a national law which requires the appropriate provincial associations to verify the transparency and accuracy of advertisements by doctors without indicating the criteria and procedures to be applied in exercising that authority?

Appeal brought on 11 December 2006 by GlaxoSmithKline Services Unlimited (GSK), anciennement Glaxo Wellcome plc against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) delivered on 27 September 2006 in Case T-168/01: GlaxoSmithKline Services Unlimited v Commission of the European Communities

(Case C-501/06 P)

(2007/C 42/18)

Language of the case: English

Parties

Appellant: GlaxoSmithKline Services Unlimited, anciennement Glaxo Wellcome plc (represented by: I. Forrester QC, J. Venit, member of the New York Bar, S. Martínez Lage, abogado, A. Komninos, Δικηγόρος, A. Schulz, Rechtsanwalt)

Other parties to the proceedings: Commission of the European Communities, European Association of Euro Pharmaceutical Companies (EAEPC), Bundesverband der Arzneimittel-Importeure eV, Spain Pharma, SA, Asociación de exportadores españoles de productos farmacéuticos (Aseprofar)

Form of order sought

The applicant claims that the Court should:

— annul the Judgment of the Court of First Instance in so far as it rejects GSK's claim for annulment of Article 1 of the contested Decision, or take such other action as justice may require.

— award GSK the costs.

Pleas in law and main arguments

The applicant submits that the contested judgment should be annulled, in so far as it rejects GSK's claim for annulment of article 1 of the contested decision on the following grounds:

— The Court of First Instance erred in reaching the conclusion that the General Sales Conditions produce ap0preciable anti-competitive effects and thus violate Article 81(1) EC, failing appropriately to assess their actual legal and economic context. Furthermore, (i) the intra-brand price competition that the Court refers to in its Judgment is itself the result of a market distortion, and (ii) the Court relied on alleged marginal advantages that final consumers in importing countries could have derived from the participation of the Spanish wholesalers in intra-brand competition.

— The Court lacked the competence to draw factual conclusions concerning the possible effect upon patients and those who paid for their medicines, given the absence of a basis for such conclusions in the contested Commission decision.

Action brought on 13 December 2006 — Commission of the European Communities v Italian Republic

(Case C-504/06)

(2007/C 42/19)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Pignataro-Nolin and I. Kaufmann-Bühler, Agents)

Defendant: Italian Republic

Forms of order sought

— declare that, by having failed to transpose correctly in Italian law Article 3(1) of Council Directive 92/57/EEC ([1]) of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC ([2])), the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.