## Action brought on 16 January 2007 — Polimeri Europa v Commission

**(Case T-12/07)**

(2007/C 56/69)

*Language of the case: Italian*

### Parties

*Applicant:* Polimeri Europa SpA (Brindisi, Italy) (represented by: M. Siragusa, F.M. Moretti and L. Nascimbene, avvocati)

*Defendant:* Commission of the European Communities

### Form of order sought

The applicant claims that the Court should:

— annul the decision in its entirety, as well as all acts inseparably connected therewith and, in consequence, direct the Commission to take steps to recover the copy, forwarded to Michelin, of the non-confidential version of the new statement of objections;

— order the Commission to pay the costs of these proceedings.

### Pleas in law and main arguments

By the present application, the applicant contests the Commission's decision (COMP/F2/D (2006) 1095) adopted on 6 November 2006 in the proceeding initiated pursuant to Article 81 EC (Case COMP/F38.638 BR/ESBR), by which the Commission forwarded to Manufacture Française des Pneumatiques Michelin (MFPM) a copy of the non-confidential version of the statement of objections adopted on 6 April 2006. MFPM had previously been admitted to the administrative procedure as an interested third party, since it had been asked to forward possible observations.

In support of the forms of order sought, the applicant submits:

— infringement of its rights of defence. On that point, the applicant maintains that ever since the adoption of the decision, the Commission has concealed the true purpose and nature of Michelin's participation in the procedure, thus limiting the possibilities of defence open to the applicant and negatively affecting the applicant's position in the case;

— the decision is unlawful, regard being had to the legal basis cited, in particular Article 6 of Regulation No 773/2004 ([1]). The applicant maintains in this connection that Michelin cannot be regarded as a complainant, because the Form C submitted by Michelin is not an act capable of triggering the procedure launched following a complaint for the purposes of Article 7 of Regulation No 1/2003 ([2]). The decision is therefore vitiated for infringement of the latter provision, read in conjunction with Article 7 of Regulation No 773/2004.

([1]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

([2]) 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 12 January 2007 — Cemex UK Cement v Commission

**(Case T-13/07)**

(2007/C 56/70)

*Language of the case: English*

### Parties

*Applicant:* Cemex UK Cement Ltd (Thorpe, United Kingdom), (represented by: D. Wyatt QC, S. Taylor, Solicitor, S. Tromans and C. Thomann, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

— to annul the Commission decision of 29 November 2006, concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC ([1]); insofar as

  — the latter decision failed to object to/approved an allocation of allowances to the applicant in respect of its Rugby plant which was inadequate and unlawful to the extent of 343 838 tonnes;

  — the latter decision failed to object to/approved an allocation to cement manufacturers in competition with the applicant which was excessive and unlawful to the extent of the 343 838 tonnes comprising as it did the under-allocation to the applicant;

— the latter decision failed to object to/approved the allocation methodology laid down in paragraphs 3(7) and 3(8) of the UK national allocation plan, and paragraphs 28 and 30 of Appendix C to the UK national allocation plan insofar as the latter methodology treats a cement plant as commencing operations in a year in which the plant was undergoing commissioning, and treats this year as the first year of operation of such a plant, and calculates emission allowances on the basis of average emissions for the baseline period 2000-2003, excluding the lowest year's emissions, regardless of the actual length of the commissioning period of the plant in question;

— to order the Commission to bear the applicant's costs.

**Pleas in law and main arguments**

The application at stake is made pursuant to Article 230 EC for the annulment, in relevant part, of Commission decision of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC of the European Parliament and of the Council.

The grounds for annulment advanced by the applicant are mainly that the Commission allegedly failed to object to/approved an under-allocation of allowances to the applicant's Rugby plant, which, according to the applicant:

— unlawfully discriminates against that plant by failing to take sufficient account of the latter plant's period of commissioning, and by basing the allocation to the plant on a period of emissions which the United Kingdom authorities knew to be unrepresentative;

— restricts the right of establishment of the applicant's parent company Cemex Espana, since it allegedly hinders and makes less attractive the exercise by the latter of a fundamental freedom, and cannot be justified by imperative requirements in the general interest; and

— along with the resulting over-allocation to the applicant's competitors, amounts to state aid contrary to Article 87 and 88 EC.

(1) Directive 2003/87/EC of the European Parliament and of the Council concerning the establishment of a scheme for greenhouse gas emission allowance trading in the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

## Action brought on 1 February 2007 — US Steel Košice v Commission

**(Case T-22/07)**

(2007/C 56/71)

*Language of the case: English*

**Parties**

*Applicant:* US Steel Košice s.r.o. (Košice, Slovak Republic) (represented by: E. Vermulst, S. Van Cutsem, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Commission's Decision D/59829 of 22 November 2006 concerning the application of the sales cap to Bulgaria and Romania; and

— order the Commission to pay the applicants costs.

**Pleas in law and main arguments**

By means of its application, the applicant seeks annulment of Commission Decision D/59829 of 22 November 2006 extending the application of the sales cap provided in Title 4, point 2(a)(i) of Annex XIV to the Act of Accession so as to include Bulgaria and Romania. The contested decision determined that the sales cap for 2007 and subsequent years had to be recalculated taking into account 2001 sales data for Romania and Bulgaria. To this end, it required the Slovak Republic to provide the applicant's 2001 sales data for these countries.

The applicant benefits from aid in the form of tax exemption, on the basis of transitional measures in the field of state aid that the Slovak Republic is permitted to apply to one beneficiary in the steel sector.

In support of its claims, the applicant argues that the contested decision is illegal insofar as it requires the applicant to modify its sales policy and cap its sales of certain steel products to customers in Bulgaria and Romania in order to benefit from aid authorized under Community law.

The applicant submits that the contested decision imposes an additional condition that did not exist when the Act of Accession entered into force and, thus, contradicts the wording, the spirit and the general scheme of the Act of Accession. According to the applicant the term 'enlarged EU' referred to in Annex XIV, Title 4, point 2(a)(i) does not include Romania and Bulgaria.

In addition, the applicant claims that the contested decision must be annulled since the Commission acted where it had no competence, violated the applicant's legitimate expectations and failed to respect the principle of proportionality.