Action brought on 16 April 2007 — Siemens v Commission

(Case T-110/07)

(2007/C 140/46)

Language of the case: German

Parties

Applicant: Siemens AG (Berlin and Munich, Germany) (represented by I. Brinker, T. Loest and C. Steinle, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— in accordance with the first paragraph of Article 231 EC, annul the Commission's decision of 24 January 2007 (Case COMP/F/38.899 — Gas-isolated switchgear) in so far as it affects the applicant;

— in the alternative, reduce the fine imposed in Article 2(m) of the decision;

— in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance, order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2006) 6762 final of 24 January 2007 in Case COMP/F/38.899 — Gas-isolated switchgear. In the contested decision fines were imposed on the applicant and other undertakings for infringement of Article 81 EC and Article 53 of the EEA Agreement. According to the Commission, the applicant took part in a set of agreements and concerted practices concerning the gas-isolated switchgear sector.

The applicant puts forward three pleas in law in support of its application.

First, the Commission is criticised for failing to demonstrate and prove the alleged infringements specifically and in detail. In particular, the Commission did not demonstrate and prove the effects of the alleged infringement on the common market and the EEA during the first phase of the alleged infringement up to 1999.

Second, the applicant submits that the Commission wrongly assumed that there was a single continuous infringement and wrongly determined the duration of the infringement. According to the applicant, the Commission was unable to prove that the applicant had been involved in the alleged infringement after 22 April 1999. Furthermore, there was a breach of Article 25 of Regulation (EC) No 1/2003 ([1]), since, in the applicant's view, the limitation period had expired with respect to its participation in the alleged infringement during the first phase up to 1999.

Finally, the applicant complains of serious errors of law of the Commission in assessing the fine. It is submitted, for instance, in this respect that the Commission misassessed the seriousness and duration of the infringement and manifestly applied an excessive 'deterrent multiplier' to the applicant. In addition, the Commission wrongly found that the applicant had played a leading part and wrongly failed to take into account the applicant's cooperation with the Commission.

([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 18 April 2007 — Toshiba v Commission

(Case T-113/07)

(2007/C 140/47)

Language of the case: English

Parties

Applicant: Toshiba Corp. (Tokyo, Japan) (represented by: J. MacLennan, Solicitor, A. Schulz and J. Borum, laywers)

Defendant: Commission of the European Communities

Form of order sought

The applicant requests the Court to:

— annul Commission's decision of 24 January 2007 — Case COMP/F/38.899 — Gas Insulated Switchgear; or

— annul the Commission's decision as far as it relates to Toshiba; or

— amend Articles 1 and 2 of the decision to annul or substantially reduce the fine imposed on Toshiba; and

— order the Commission to pay the costs of the proceedings, including the costs incurred in connection with the bank guarantee.

Pleas in law and main arguments

The applicant lodged an action for annulment, under Article 230 EC against Commission decision of 24 January 2007 (Case COMP/F/38.899 — Gas insulated switchgear — C(2006) 6762 final), on the basis of which the Commission found the applicant, among other undertakings, liable to have infringed Article 81(1) EC and from 1 January 1994 also Article 53 EEA in the gas insulated switchgear sector (hereinafter 'GIS'), through a set of agreements and concerted practices consisting of (a) market sharing, (b) the allocation of quotas and maintenance of the respective market shares, (c) the allocation of individual GIS projects (bid-rigging) to designated producers and the manipulation of the bidding procedure for those projects, (d) price fixing, (e) agreements to cease licence agreements with non-cartel members and (f) exchanges of sensitive market information. In the alternative, the applicant applies for a cancellation or reduction of the fines imposed.

According to the applicant, the Commission appears to have based its findings on three arrangements concluding on the existence of a world-wide cartel. Even if that were the case, the applicant submits that the Commission has no jurisdiction over behaviour which might restrict competition outside the EEA.

The applicant claims that the Commission has failed to prove to the requisite legal standard that the applicant took part in any agreement or concerted practice not to sell in Europe, or that European GIS suppliers compensated the Japanese companies for not entering Europe by way of 'loading' European projects into the European 'GQ' ([1]) quota. The applicant further submits that the Commission has relied for corroboration on equally indirect, vague, unsubstantiated evidence consisting mainly of oral statements made by the leniency applicant and, in addition, has allegedly ignored evidence provided to contradict the incriminating statements.

Moreover, whereas the applicant does not deny that it was part of the 'GQ agreement' it contends that the agreement at stake was a world-wide agreement not covering Europe and over which the Commission lacked jurisdiction. The applicant claims that the Commission, in its attempt the bring the applicant under its jurisdiction, shifted the focus of its legal assessment entirely on whether there had been a 'common understanding' (that the Japanese would refrain form entering the European market that the European companies would equally refrain from competing in Japan) and whether certain European projects were systematically reported to the Japanese companies or 'loaded' into the European 'GQ' as part of this 'common understanding'. Hence, it is claimed that the Commission has not established that the applicant should be held responsible for the series of infringements at European level and has allegedly committed a manifest error of appraisal.

It is further submitted that the contested decision is vitiated by procedural irregularities. To this extent, the applicant suggests that its rights of defence have been compromised through the Commission's failure to provide adequate reasoning, to grant access to evidence and distortion of evidence.

In the alternative, the applicant submits that the Commission's failure to properly apportion responsibility between the European and Japanese companies vitiated the method used for assessing the fines for the addressees of the decision. On this account, the applicant sustains that the Commission did not properly assess either the gravity or the duration of the infringement and thus, has unfairly discriminated against the applicant.

([1]) 'G' stands for 'gear' and 'Q' for 'quota'.

Action brought on 17 April 2007 — France v Commission

(Case T-116/07)

(2007/C 140/48)

Language of the case: French

Parties

Applicant: French Republic (represented by: G. de Bergues and S. Ramet, Agents)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in its entirety;

— order the Commission to pay the costs.

Pleas in law and main arguments

By decision of 30 June 1997, adopted following a proposal from the Commission and in accordance with the procedure laid down in Council Directive 92/81/EEC ([1]), the Council authorised the Member States to apply or to continue to apply the existing reduced rates of excise duty or exemptions from excise duty to certain mineral oils when used for specific purposes. By four subsequent decisions, the Council extended that authorisation, the final authorisation period expiring on 31 December 2006. France is authorised to apply these reduced rates or exemptions to heavy fuel oil used as fuel for the production of alumina in the Gardanne region.

In a letter of 30 December 2001, the Commission notified France of its decision to initiate proceedings under Article 88(2) of the EC Treaty relating to the exemption from excise duty on mineral oils used as fuel for alumina production in the Gardanne regio ([2]). On 7 December 2005, in consequence of this procedure, the Commission adopted Decision 2006/323/EC