

**Judgment of the Court (Third Chamber) of 10 September 2009 — Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals International BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV v Commission of the European Communities**

(Case C-97/08 P) <sup>(1)</sup>

*(Appeal — Competition — Agreements, decisions and concerted practices — Article 81(1) EC — Article 53(1) of the EEA Agreement — Article 23(2) of Regulation (EC) No 1/2003 — Groups of undertakings — Imputability of infringements — Responsibility of a parent company for the infringement of competition rules by its subsidiaries — Decisive influence exercised by the parent company — Rebuttable presumption where the parent company has a 100 % shareholding)*

(2009/C 267/28)

Language of the case: English

**Parties**

*Appellants:* Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals International BV, Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals BV (represented by: C. Swaak, M. van der Woude and M. Mollica, *avocats*)

*Other party to the proceedings:* Commission of the European Communities (represented by: X. Lewis and F. Castillo de la Torre, *Agents*)

**Re:**

Appeal against the judgment of the Court of First Instance (Second Chamber) of 12 December 2007 in Case T-112/05 *Akzo Nobel NV and Others v Commission of the European Communities*, which rejected an application for annulment of Commission Decision 2005/566/EC of 9 December 2004 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-2/37.533 — Choline chloride) (OJ 2005 L 190, p. 22) concerning a complex of agreements and concerted practices consisting of price fixing, market sharing and agreed actions against competitors in the European market for choline chloride — Concept of undertaking within the meaning of Article 81 EC and Article 23(2) of Regulation No 1/2003.

**Operative part of the judgment**

*The Court:*

1. Dismisses the appeal;
2. Orders Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals International BV, Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals BV to pay the costs.

<sup>(1)</sup> OJ C 128, 24.5.2008.

**Judgment of the Court (Third Chamber) of 10 September 2009 — Commission of the European Communities v Kingdom of Belgium**

(Case C-100/08) <sup>(1)</sup>

*(Failure of a Member State to fulfil its obligations — Articles 28 EC and 30 EC — Protection of species of wild fauna and flora — Legislation on the keeping and marketing of birds born and bred in captivity legally placed on the market in other Member States)*

(2009/C 267/29)

Language of the case: Dutch

**Parties**

*Applicant:* Commission of the European Communities (represented by: S. Pardo Quintillán and R. Troosters, acting as *Agents*)

*Defendant:* Kingdom of Belgium (represented by: T. Materne, acting as *Agent*, G. Van Calster, *avocat*)

**Re:**

Failure of a Member State to fulfil its obligations — Infringement of Article 28 EC — Protection of species of wild fauna and flora — Prohibition to keep certain birds legally brought to the market in other Member States

**Operative part of the judgment**

*The Court:*

1. Declares that the Kingdom of Belgium has failed to fulfil its obligations under Article 28 EC by
  - making the import, keeping and sale of specimens of birds born and bred in captivity that were brought to the market legally in other Member States subject to restrictive conditions that require the market participants concerned to alter the marking of the birds so as to comply with the special Belgian legislative requirements, and failing to recognise the marking accepted in other Member States or certificates issued in accordance with Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein; and
  - denying traders the possibility to receive exemptions from the prohibition to keep indigenous European birds which were brought to the market legally in other Member States.
2. orders the Kingdom of Belgium to pay the costs.

<sup>(1)</sup> OJ C 128, 24.5.2008.