



Reports of Cases

Judgment of the General Court (Third Chamber) of 12 December 2012 — 1. garantovaná v Commission

(Case T-392/09)

(Competition — Agreements, decisions and concerted practices — Market for calcium carbide and magnesium for the steel and gas industries in the EEA, with the exception of Ireland, Spain, Portugal and the United Kingdom — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Imputability of the unlawful conduct — Fines — Ceiling of 10% of turnover — Relevant turnover — Rights of the defence — Obligation to state reasons — Proportionality — 2006 Guidelines on the method of setting fines — Ability to pay)

1. *Competition — Union rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Burden of proof (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 19-21, 29-33, 41, 42, 46, 48, 49, 54-57)*
2. *Competition — Union rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Parent company behaving as a simple financial investor — Concept (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 51, 52)*
3. *Competition — Administrative procedure — Statement of objections — Necessary content — Observance of the rights of the defence — Indication of the main elements of fact and law likely to entail a fine — Sufficient indication having regard to the right to be heard on the determination of the amount of the fine (Art. 81 EC; Council Regulation No 1/2003, Art. 27) (see paras 68, 69, 73, 74, 78, 79)*
4. *Competition — Fines — Amount — Determination — Maximum amount — Calculation — Turnover to be taken into consideration — Turnover for the business year immediately preceding the date on which the fine was imposed — Business year characterised by the transfer of a series of assets — Use of the turnover for the immediately preceding business year — Lawfulness — No breach of the principle of legal certainty (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 86-90, 103-107)*
5. *Competition — Fines — Amount — Determination — Criteria — Deterrent effect of the fine — Discretion of the Commission — Limits — Compliance with the principles of proportionality and equal treatment — No obligation to take account of the deficit situation of the undertaking concerned (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notice 2006/C 210/02, para. 35) (see paras 112-119, 131, 132, 137)*

6. *Competition — Fines — Amount — Determination — Criteria — Actual capacity of the undertaking to pay in a particular social and economic context — To be taken into consideration — Conditions — Economic viability of the undertaking irretrievably endangered by the fine — Condition not capable of being fulfilled by an undertaking having decided to cease business and sell its assets (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notice 2006/C 210/02, para. 35) (see paras 142-144)*

Re:

APPLICATION for annulment of Commission Decision C(2009) 5791 final of 22 July 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.396 - Calcium carbide and magnesium based reagents for the steel and gas industries), in so far as it concerns the applicant, and, in the alternative, a reduction of the fine imposed on the applicant by that decision.

Operative part

The Court:

1. Dismisses the action;
2. Orders 1. garantovaná a.s. to pay the costs.