



Reports of Cases

Judgment of the General Court (Third Chamber) of 12 December 2012 — Ecka Granulate and non ferrum Metallpulver v Commission

(Case T-400/09)

(Competition — Cartels — Market in 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 — Fines — Principle that penalties must have a sound legal basis — 2006 guidelines for the calculation of the amount of fines — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality — Ability to pay)

1. *Competition — Fines — Amount — Determination — Discretion conferred on the Commission by Article 23 of Regulation No 1/2003 — No infringement of the principle that penalties must have a sound legal basis (Art. 81 EC; Charter of Fundamental Rights of the European Union, Art. 49(1); Council Regulation No 1/2003, Art. 23 ; Commission Notice 2006/C 210/02) (see paras 25-34)*
2. *Competition — Fines — Amount — Determination — Guidelines on the method of setting fines — Possibility of taking into account an undertaking's actual capacity to pay in a particular social and economic context — Commission's margin of discretion — Unlawfulness — None (Art. 81 EC; Council Regulation No 1/2003, Art. 23; Commission Notice 2006/C 210/02, para. 35) (see paras 40-46, 48-51)*
3. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Modification of the Guidelines for the calculation of fines — No obligation on the Commission to adhere to its previous decision-making practice (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notices 2002/C 45/03 and 2006/C 210/02) (see paras 59, 60)*
4. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Cooperation of the undertaking concerned outside the scope of the Leniency Notice — Criteria for assessment — Account taken of the fact that the undertaking concerned did not challenge the facts — Limits (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notice 2006/C 210/02, para. 29) (see paras 62, 65-67)*
5. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Cartel limited to only one of the business activities of the undertaking concerned and no previous infringements — Not included (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notice 2006/C 210/02, paras 28 and 29) (see paras 70, 71)*

6. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Establishment of a programme for compliance with competition rules — Low risk of repeat infringement — Not imperative to take into account (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notice 2006/C 210/02, para. 29) (see paras 79, 80)*
7. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Conduct deviating from that agreed within the cartel — Assessment (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notice 2006/C 210/02, para. 29) (see paras 85-90)*
8. *Competition — Fines — Amount — Determination — Criteria — No obligation to take account of the deficit situation of the undertaking concerned — Actual capacity of the undertaking to pay in a particular social and economic context — To be taken into consideration — Conditions (Art. 81 EC; Council Regulation No 1/2003, Art. 23(2) and (3); Commission Notice 2006/C 210/02, para. 35) (see paras 94-100, 112, 114, 115)*

Re:

ACTION 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 applicants and, in the alternative, reduction of the fine imposed on the applicants in that decision.

Operative part

The Court:

1. Dismisses the action;
2. Orders Ecka Granulate GmbH & Co. KG and non ferrum Metallpulver GmbH & Co. KG to pay the costs incurred by the European Commission and to bear their own costs;
3. Orders the Council of the European Union to bear its own costs.