

By failing to fulfil its obligations under the abovementioned provisions of law, the Commission has prevented the applicant from being compensated for the loss sustained by means of recourse to the abovementioned compulsory civil liability insurance.

The applicant had expected to sell at least 500 000 thermometers a year.

From the moment the decision was taken to withdraw those goods from the market, the doors of that market were closed to the applicant, since its image was irreparably associated with the non-conformity [with the requirements] of the goods it had placed on the market.

The damage suffered by the applicant amounts to a total of EUR 2 419 665,42.

(¹) Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1).

(²) OJ 1993 L 220, p. 23.

Action brought on 4 May 2007 — Schindler Holding and Others v Commission

(Case T-138/07)

(2007/C 155/52)

Language of the case: German

Parties

Applicants: Schindler Holding Ltd (Hergiswil, Switzerland), Schindler Management AG (Ebikon, Switzerland), S.A. Schindler N.V. (Brussels, Belgium), Schindler Sàrl (Luxembourg, Luxembourg), Schindler Liften B.V. (The Hague, Netherlands) and Schindler Deutschland Holding GmbH (Berlin, Germany) (represented by: R. Bechtold, W. Bosch, U. Soltész and S. Hirsbrunner, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul the decision of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators, pursuant to the first paragraph of Article 231 EC;
- in the alternative, reduce the fines imposed in that decision;
- order the Commission to pay the costs of the applicants, in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

The applicants are challenging Commission Decision C(2007) 512 final of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators. In the contested decision, fines were imposed on the applicants and other undertakings on the ground of their participation in cartels relating to the installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands. In the view of the Commission, the undertakings concerned acted in breach of Article 81 EC.

In support of their action, the applicants put forward the following pleas in law:

- Infringement of the principle of legal certainty by Article 23(2) of Regulation (EC) No 1/2003 (¹) inasmuch as that provision confers on the Commission unlimited discretion in setting fines;
- Breach of the prohibition of retroactive effect by the fine imposed by the Commission;
- Lack of effectiveness of the Guidelines on the method of setting fines ('the 1998 Guidelines') (²) in that they fail adequately to take account of individual circumstances in connecting the basic amounts of fines with the respective infringements and confer too great a discretion on the Commission in determining fines;
- Illegality of the evidence adduced by cooperative undertakings on the basis of the Notice on immunity from fines and reduction of fines (³) by reason of the infringement of the *nemo tenetur* principle, of the right against self-incrimination, of the *in dubio pro reo* principle and the principle of proportionality, and by reason of the manner in which the Commission exceeded its competence by adopting that rule;
- Infringement of the principle of the division of powers and of the requirements of due process;
- Illegality of the contested decision under international law by reason of the expropriatory nature of the fines imposed;
- Infringement of the 1998 Guidelines on the ground that the basic amounts used to calculate the fines were unduly high in the light of the specific offences;
- Infringement of the 1998 Guidelines on the ground that inadequate account/no account was taken of extenuating circumstances;
- Infringement of the 2002 rules relating to cooperative undertakings on grounds of unduly low cooperation discounts or unjustified refusal of such discounts;
- Disproportionate nature of the level of the fines;
- Illegality of the contested decision in so far as it is addressed to Schindler Holding Ltd and Schindler Management AG on the ground that, in the absence of an international-law agreement with Switzerland, it was not effectively notified to those companies;

- Absence of conditions for the joint and several liability of Schindler Holding Ltd;
- Breach of Article 23(2) of Regulation No 1/2003 on the ground that the maximum limits for fines were exceeded.

-
- (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 2003 L 1, p. 1).
- (²) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).
- (³) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 2 May 2007 — Pioneer Hi-Bred International v Commission

(Case T-139/07)

(2007/C 155/53)

Language of the case: English

Parties

Applicant: Pioneer Hi-Bred International Inc. (Johnston, USA) (represented by: J. Temple Lang, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

- Find that the Commission has failed to act in accordance with Article 18 of Directive 2001/18 on the deliberate release into the environment of genetically modified organisms, in having failed to submit to the Regulatory Committee a draft of the measures to be taken pursuant to Article 5(2) of the Council decision;
- order the Commission to pay the applicant's costs.

Pleas in law and main arguments

The applicant claims, pursuant to Article 232 EC, that the Commission has failed to act, in infringement of Article 18 of Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms (¹), to ensure the adoption of a decision concerning the applicant's notification for the placing on the market of insect-resistant genetically modified maize 1507.

The applicant contends that under the procedure set out in the directive, the Commission is obliged to ensure that a decision on a notification is adopted and published within the period of

time prescribed in the directive. The applicant furthermore submits that by failing to submit to the Regulatory Committee a draft of the measures to be taken the Commission failed to ensure that such a decision was adopted even though all requirements on the applicant and other parties under the directive had been completed in accordance with the directive.

The applicant moreover submits that the Commission has been called upon to define its position within the terms of Article 232 EC which the Commission has failed to do. This has, according to the applicant, had adverse effects on the applicant's legal situation.

-
- (¹) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1).

Action brought on 26 April 2007 — Chi Mei Optoelectronics Europe and Chi Mei Optoelectronics UK v Commission

(Case T-140/07)

(2007/C 155/54)

Language of the case: English

Parties

Applicants: Chi Mei Optoelectronics Europe BV (Hoofddorp, The Netherlands), Chi Mei Optoelectronics UK Ltd (Havant, United Kingdom) (represented by: S. Völcker, F. Louis, A. Vallery, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicants respectfully ask the Court to

- annul the contested decision in its entirety; and
- order the Commission to bear the costs.

Pleas in law and main arguments

By means of their application the applicants seek annulment of Commission Decision C (2007)546 of 15 February 2007 on the basis of which the Commission, has compelled the applicants, pursuant to Article 18(3) of Council Regulation No 1/2003 (¹), to provide specific information and documents related to practices under investigation in Case COMP/F/39309 — Thin Films Transistors Liquid Crystal Displays.