Judgment of the General Court (Fourth Chamber) of 7 June 2011 — Total and Elf Aquitaine v Commission

(Case T-206/06)

(Competition — Agreements, decisions and concerted practices — Market for methacrylates — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Imputability of the unlawful conduct — Rights of the defence — Presumption of innocence — Duty to state reasons — Principle of equal treatment — Principle that penalties must fit the offence — Principle of nullum crimen, nulla poena sine lege — Principle of sound administration — Principle of legal certainty — Misuse of powers — Fines — Attribution of liability for payment within a group of companies)

1. *Competition — Community rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Presumption of decisive influence exercised by the parent company over its wholly-owned subsidiaries (Arts 81 EC and 82 EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 45-48, 115-116, 205)*

2. *Competition — Community rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Presumption of decisive influence exercised by the parent company over its wholly-owned subsidiaries — Subsidiary held by a holding company — Fact not sufficient to reverse the presumption (Arts 81 EC and 82 EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 78-79, 85)*

3. *Competition — Administrative procedure — Statement of objections — Necessary content — Observance of the rights of the defence — Undertakings afforded the opportunity to state their views on the facts, objections and circumstances alleged by the Commission (Arts 81 EC and 82 EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 130-133)*

4. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision to apply competition rules — Decision relating to several addressees — Need for sufficient reasoning, particularly with regard to the entity having to bear the burden of an infringement (Arts 81 EC and 253 EC) (see paras 177-178)*

5. *Competition — Community rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Criteria for assessment — Presumption of decisive influence exercised by the parent company over its wholly-owned subsidiaries — Allocation of payment of the fine between the various legal entities comprising the economic unit — No infringement of the unitary character of the concept of an undertaking (Arts 81 EC and 82 EC; Council Regulation No 1/2003, Art. 23(2)) (see paras 205-209)*

6. *Competition — Fines — Amount — Determination — Deterrent effect — No obligation to take account of fines already imposed for other anti-competitive activities (Art. 81 EC; Council Regulation No 1/2003, Art. 23) (see paras 297-298)*

7. *Competition — Fines — Amount — Determination — Deterrent effect — Account taken of the size and global resources of the fined undertaking (Art. 81 EC; Council Regulation No 1/2003, Art. 23) (see para. 303)*

8. *Procedure — Request that the oral procedure be reopened — Conditions for admissibility — New evidence capable of having a decisive impact on the decision (Rules of Procedure of the General Court, Art. 62) (see para. 306)*

Re:

APPLICATION for annulment of Articles 1(c) and (d), 2(b), 3 and 4 of Commission Decision C(2006) 2098 final of 31 May 2006 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.645 — Methacrylates) and, in the alternative, amendment of Article 2(b) of that decision.

Operative part

The Court:

1. Dismisses the action;

2. Orders Total SA and Elf Aquitaine SA to pay the costs.

Judgment of the General Court (Second Chamber) of 7 June 2011 — Psytech International v OHIM — Institute for Personality & Ability Testing (16PF)

(Case T-507/08)

(Community trade mark — Invalidity proceedings — Community word mark 16PF — Absolute grounds for refusal — Distinctive character — No descriptive character — No signs which have become customary — No bad faith — Article 7(1)(b) to (d) and Article 51(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) to (d) and Article 52(1)(b) of Regulation (EC) No 207/2009)

1. *Community trade mark — Surrender, revocation and invalidity — Absolute grounds of invalidity — Registration contrary to Article 7(1)(b) to (d) of Regulation No 40/94 (Council Regulation No 40/94, Arts 7(1)(b) to (d) and 51(1)(a)) (see paras 32-35, 59-65, 78-79)*

2. *Community trade mark — Surrender, revocation and invalidity — Absolute grounds of invalidity — Applicant in bad faith at the time of lodging the trade mark application (Council Regulation No 40/94, Art. 51(1)(b)) (see paras 89-93)*