Judgment of the General Court (Eighth Chamber) of 24 March 2011 — Kaimer and Others v Commission

(Case T-379/06)

(Competition — Agreements, decisions and concerted practices — Copper and copper alloy fittings sector — Decision finding an infringement of Article 81 EC — Rights of the defence — Participation in the infringement — Duration of the infringement — Fines — Attenuating circumstances — Proportionality — Equal treatment)

1. *Competition — Administrative procedure — Observance of the rights of the defence — Access to the file — Scope — Non-communication of an incriminating document — Consequences varying in accordance with the importance of the document having regard to the burden of proof on the Commission (see paras 30-32)*

2. *Competition — Agreements, decisions and concerted practices — Burden of proof — Degree of precision required of the evidence used by the Commission (Art. 81(1) EC) (see para. 47-49)*

3. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Burden of proof — Statement of an incriminated undertaking challenged by other undertakings party to the same agreement — Probative value — Assessment (Art. 81(1) EC) (see para. 50)*

4. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement and its duration on the Commission — Extent of the burden of proof (Art. 81(1) EC) (see para. 51)*

5. *Competition — Agreements, decisions and concerted practices — Participation of an undertaking in anti-competitive initiatives — Tacit approval without public distancing sufficient to render the undertaking liable (Art. 81(1) EC) (see paras 86-88)*

6. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Passive or 'follow-my-leader' role of the undertaking — Criteria for assessment (Commission Communication 98/C 9/03) (see paras 98-99)*

Re:

APPLICATION for annulment in part of Commission Decision C(2006) 4180 of 20 September 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 – Fittings), and also, in the alternative, for a reduction in the fine imposed on the applicants in that decision.

Operative part

1. Annuls Article 1 of Commission Decision C(2006) 4180 of 20 September 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 – Fittings) in so far as it relates to the period from 30 July 1996 to 31 July 1997 as regards the participation of Kaimer GmbH & Co. Holding KG and Sanha Kaimer GmbH & Co. KG and the period from 1 January 1998 to 14 July 1999 as regards the participation of Sanha Italia Srl;

2. Sets the amount of the fine imposed on Kaimer at EUR 7.15 million, in respect of which it is jointly and severally liable with Sanha Kaimer as to EUR 7.15 million and with Sanha Italia as to EUR 6.325 million;

3. Dismisses the action as to the remainder;

4. Orders Kaimer, Sanha Kaimer and Sanha Italia to bear their own costs and to pay 50 % of the costs of the European Commission;

5. Orders the Commission to bear 50 % of its own costs.

Judgment of the General Court (Eighth Chamber) of 24 March 2011 — FRA.BO v Commission

(Case T-381/06)

(Competition — Agreements, decisions and concerted practices — Copper and copper alloy fittings sector — Decision finding an infringement of Article 81 EC — Fines — Leniency Notice — Guidelines on the method of setting fines — Attenuating circumstances — Immunity from fines — Legitimate expectations — Equal treatment)

1. *Community law — Principles — Protection of legitimate expectations — Limits — Prevention of infringements of the competition rules — Determination of the amount of fines — Method of calculating fines — Discretion of the institutions — Leniency notice not relevant (Commission Communication 96/C 207/04) (see paras 93-94)*

2. *Competition — Fines — Amount — Determination — Criteria — Reduction of the fine for cooperation of the fined undertaking — Conditions — Discretion of the Commission — Quality and usefulness of the information supplied taken into account (Commission Communication 96/C 207/04, Title D, Section 2) (see para. 96)*

3. *Competition — Fines — Amount — Determination — Reduction of the fine in return for the cooperation of the undertaking concerned — Discretion of the Commission — Comparisons between the facts of different cases — Indicative character — Factors to be taken into consideration — Breach of the principle of equal treatment — None (Commission Communication 96/C 207/04, Title D, Section 2) (see paras 101, 103-104)*