INFORMATION ON UNPUBLISHED DECISIONS

Reports of Cases

Judgment of the General Court (Fourth Chamber) of 6 March 2012 — FLSmidth v Commission

(Case T-65/06)

(Competition — Agreements, decisions and concerted practices — Plastic industrial bags sector — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Duration of the infringement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality — Joint and several liability)

1. *Competition — EU 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 — Holding company holding 100% of the capital of an interposed company holding all the capital of a group subsidiary — Evidential obligations of the company seeking to rebut that presumption (Art. 81(1) EC) (see paras 22-24, 26-40)*

2. *Competition — Fines — Assessment by reference to the individual conduct of the undertaking — Irrelevant that no sanction brought against another economic operator (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2)) (see para. 35)*

3. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Passive or 'follow-my-leader' role of the undertaking — Criteria for assessment (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2); Commission Notice 98/C 9/03, Section 3, first indent) (see paras 57-59, 63)*

4. *Competition — Fines — Amount — Determination — Maximum amount — Calculation — Turnover to be taken into consideration — Cumulative turnover of all the companies constituting the economic unit acting as an undertaking — Limits (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2); Commission Notice 98/C 9/03, Section 5) (see paras 78-79)*

5. *Competition — Fines — Amount — Determination — Non-imposition or reduction of the fine for cooperation of the undertaking concerned — Conditions — Parent company and subsidiaries — Individual assessment of the cooperation of those companies (Art. 81(1) EC; Council Regulation No 1/2003, Art. 23(2); Commission Notice 96/C 207/04, Title D, Section 2) (see paras 83-86, 88-96)*

Re:

APPLICATION for the partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

Operative part

The Court:

1. Annuls Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) in so far as it holds FLSmidth & Co. A/S liable for the single and continuous infringement referred to in Article 1(1) thereof, for the period from 31 December 1990 to 31 December 1991;

2. Sets the amount for payment of which FLSmidth & Co. is held jointly and severally liable under Article 2(f) of Decision C(2005) 4634 at EUR 14.45 million;

3. Dismisses the action as to the remainder;

4. Orders the European Commission and FLSmidth & Co. each to bear their own costs.