Judgment of the General Court (Sixth Chamber, Extended Composition) of 16 June 2011 — Solvay Solexis v Commission

(Case T-195/06)

(Competition — Agreements, decisions and concerted practices — Hydrogen peroxide and sodium perborate — Decision finding an infringement of Article 81 EC — Duration of infringement — Concept of 'agreement' and 'concerted practice' — Access to the file — Fines — Equal treatment — Leniency Notice — Duty to state reasons)

1. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Concept — Joint intention as to the conduct to be adopted on the market — Included — Pursuance of negotiations on certain aspects of the restriction — No effect (Art. 81(1) EC) (see paras 55-56, 98, 100)*

2. *Competition — Agreements, decisions and concerted practices — Concerted practice — Concept — Exchange of information in the context of a cartel or with a view to its preparation — Taking into account of information exachanged — Presumption — Conditions (Art. 81(1) EC) (see paras 57-59, 102-103, 116)*

3. *Competition — Agreements, decisions and concerted practices — Complex infringement with elements of an agreement and elements of a concerted practice — Single description as an 'agreement and/or concerted practice' — Lawfulness (Art. 81(1) EC) (see paras 60-62, 81)*

4. *Competition — Agreements, decisions and concerted practices — Adverse effect on competition — Criteria for assessment — Anti-competitive purpose — Sufficient (Art. 81(1) EC) (see paras 113, 118, 157)*

5. *Competition — Agreements, decisions and concerted practices — Prohibition — Agreements which continue to produce their effects after they have formally ceased to be in force — Application of Article 81 EC (Art. 81(1) EC) (see paras 124-125)*

6. *Competition — Agreements, decisions and concerted practices — Proof — Evidence adduced by the Commission — Participation in meetings having an anti-competitive object — Evidentiary duties of undertakings denying the unlawfulness of some of those meetings (Art. 81(1) EC) (see para. 131)*

7. *Competition — Administrative procedure — Observance of the rights of the defence — Access to the file — Scope — Non-communication of a document — Consequences — Need to draw a distinction, at the level of the burden of proof borne by the undertaking concerned, between inculpatory and exculpatory documents (Council Regulation No 1/2003, Art. 27(2)) (see paras 146-149)*

8. *Competition — Administrative procedure — Commission decision — Duty to state reasons — Scope — Obligation on the Commission to take a position on documents not containing exculpatory evidence — None (Arts 81 EC and 253 EC) (see para. 159)*

9. *Competition — Administrative procedure — Observance of the rights of the defence — Communication of replies to a statement of objections — Conditions — Limits (Art. 81 EC) (see paras 167-171, 173, 176, 178-181)*

10. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Single and continuous infringement — Taking into account of variations in intensity of the offending conduct (Council Regulation No 1/2003, Art. 23(3)) (see paras 191, 210)*

11. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Obligation to take account of the actual impact on the market — Scope (Council Regulation No 1/2003, Art. 23(2); Commission Notice 98/C 9/03, Section 1A) (see paras 195-197)*

12. *Competition — Fines — Amount — Determination — Division of the undertakings in question into categories with a specific starting point — Lawfulness — Conditions — Judicial review (Council Regulation No 1/2003, Art. 23(2)) (see paras 220-221)*

13. *Competition — Fines — Amount — Determination — Criteria — Gravity of the infringement — Mitigating circumstances — Passive or 'follow-my-leader' role of the undertaking — Criteria for assessment (Council Regulation No 1/2003, Art. 23; Commission Notice 98/C 9/03, Section 3, first indent) (see paras 241-243, 252, 268)*

14. *Competition — Fines — Amount — Determination — Criteria — Mitigating circumstances — Conduct deviating from that agreed within the cartel — Assessment (Council Regulation No 1/2003, Art. 23; Commission Notice 98/C 9/03, Section 3) (see paras 269, 271-272)*

15. *Competition — Fines — Amount — Determination — Criteria — Taking into account of cooperation of the incriminated undertaking with the Commission outside the framework laid down by the leniency notice — Conditions — Limits (Council Regulation No 1/2003, Art. 23; Commission Notices 98/C 9/03, Section 3, and 2002/C 45/03, Section 23(b), third para.) (see paras 283, 285)*

16. *Competition — Fines — Decision imposing fines — Duty to state reasons — Scope — Indication of the factors which led the Commission to assess the gravity and the duration of the infringement (Art. 253 EC; Council Regulation No 1/2003, Art. 23(3)) (see paras 297, 299)*

17. *Competition — Fines — Amount — Determination — Deterrent effect — Criteria for assessing the deterrent effect (Council Regulation No 1/2003, Art. 23(2); Commission Notice 98/C 9/03) (see paras 305-306)*

18. Competition — Community rules — Infringements — Attribution — Transfer of an area of business — Legal person responsible for the running of the undertaking at the time of the infringement (Art. 81(1) EC) (see paras 308, 310)

Re:

APPLICATION for partial annulment of Commission Decision C(2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.620 — Hydrogen peroxide and perborate) and for a reduction of the fine imposed on the applicant.

Operative part

The Court:

1. Dismisses the action;

2. Orders Solvay Solexis SpA to pay the costs.

Order of the President of the General Court of 21 June 2011 — MB System v Commission

(Case T-209/11 R)

(Application for interim measures — State aid — Recovery obligation — Application for stay of execution — Urgency — Balancing of interests)