

In support of its claims, the applicant argues that the penalty imposed on it by the decision which is the subject-matter of the action should be regarded as wrongly set, owing to:

- incorrect assessment of the duration of the infringement, which took place from May/September 1997 to May 2000 and not, as regards the applicant itself, from May 1995 to December 2000;
- incorrect assessment concerning the main effect on and application to the market of the infringement and of the passive role played by the applicant, in the period from May 1995 to May/September 1997 inclusive;
- non-participation of the applicant in the agreement on the limitation of capacity. When imposing the penalty the Commission disregarded the fact that Ausimont never joined, either in 1997 or subsequently, the agreement on the restriction/limitation of production capacity. The infringement attributable to Ausimont is therefore less serious than that committed by other undertakings on account of its lesser effect on competition, and also in accordance with the fundamental principles of equal treatment, fairness and proportionality;
- failure to take into account its cooperation. In fact the defendant did not grant the applicant any benefit with regard to its cooperation, or as a result of its participation in the leniency programme, or in respect of the mitigating circumstance provided for by the Guidelines.

Finally, the applicant claims infringement of the principle of proportionality.

Action brought on 19 July 2006 — Edison v Commission

(Case T-196/06)

(2006/C 212/75)

Language of the case: Italian

Parties

Applicant(s): Edison S.p.A. (represented by: Mario Siragusa, Roberto Casati, Matteo Beretta, Pietro Merlino and Eugenio Bruti Liberati, lawyers.)

Defendant(s): Commission of the European Communities

Forms of order sought

- Annulment of Commission Decision C(2006) 1766 final of 3 May 2006 in Case COMP/F/38.620 — *Hydrogen peroxide and sodium perborate* in so far as it affects the applicant.

- In the alternative, annulment or reduction of the fine imposed on Edison by the contested decision.
- The Commission to pay the costs.

Pleas in law and main arguments

The contested decision in this case is the same as in Case T-185/06 *L'air Liquide v Commission*. That decision held the applicant jointly and severally liable for the infringement committed by Ausimont for the whole duration of its participation in the cartel, and fined it EUR 58 125 000 for that infringement, EUR 25 619 000 of which jointly and severally with Solvay Solexis S.p.A.. That latter company is currently controlled by Solvay SA/NV, but, at the time of the infringement, under the name of Ausimont S.p.A., it was indirectly controlled by Montedison (now Edison).

In support of its arguments, the applicant argues:

- Infringement of essential procedural requirements, especially of the principle that both sides should be heard and of the rights of the defence; infringement of Article 27(1) of Regulation (EC) No 1/2003 and of Article 11(2) of Regulation (EC) No 773/2004, for using for the first time in the decision, in support of its accusations, the fact that, for a large part of the infringement period, the managing director of Ausimont was also a board member of Montecatini, i.e. the intermediate company entirely controlled by Montedison (now Edison), which held the entire company capital of Ausimont.
- Infringement of Article 81 of the EC Treaty by wrongly imputing to the applicant the infringement of the competition rules committed by Ausimont. First, the Commission erred in concluding that entire ownership of the capital of an undertaking is sufficient to give rise to the presumption that the controlling company exercises a determining influence on the controlled company, so that the former may be regarded as jointly and severally liable for the infringement committed by the latter. Secondly, the applicant argues that the contested decision is self-contradictory and insufficient in its reasoning, and that Article 81 of the EC Treaty has been infringed in relation to the conclusion that, in this case, there were 'other elements' present which indicated that Ausimont was not an autonomous entity capable of deciding its own commercial strategy.

The applicant also claims that there has been infringement of the duty to state reasons, in that the Commission failed to consider all the documentary proofs and factual circumstances adduced by Edison in support of the contention that Ausimont was independent in determining its own commercial policies.
