The applicants further claim, in their third plea, that the Commission has failed to prove anti-competitive conduct on the German sanitary ceramics market. The applicants complain, in that regard, that the Commission unlawfully categorised discussions at a German ceramics association as price-fixing and deliberate restrictions on competition, and that the Commission infringed the applicants' right to a fair and unprejudiced proceeding by making improper incriminating findings on the basis of clearly irrelevant evidence.

In their fourth plea, the applicants claim that they did not participate in price-fixing in France or Belgium. In the view of the applicants, the Commission found, wrongly, that discussions at Belgian and French ceramic associations involved price-fixing and also wrongly assessed the duration of the alleged infringement and thereby misapplied Article 101 TFEU.

In the context of the fifth plea, the applicants claim that the Commission found, incorrectly, that the actions on the market for wardrobe doors, shower partitions and ceramics were a single and continuous infringement, and thereby misapplied Article 101 TFEU. In that respect, the applicants allege that the criteria developed in the case-law for establishing a single and continuous infringement were not met.

For their sixth plea, the applicants claim that the Commission clearly infringed their rights of the defence and their right to an oral hearing under Articles 12 and 14 of Regulation (EC) No 773/2004 [1] on account of the excessive length of the proceeding and because of the replacement of all the internal Commission staff taking part in the decisionmaking process after the oral hearing.

In the context of their seventh plea, the applicants claim that the Commission wrongly used its Guidelines on the setting of the fines [2] to calculate the amount of the fine, in that, since the entry into force of the Treaty of Lisbon, those guidelines are invalid on the basis that they infringe Article 290(1) TFEU and Article 52(1) of the Charter of Fundamental Rights of the European Union.

In their eighth plea, the applicants claim that the Commission's calculation of the amount of the fine was erroneous, since the Commission did not take account of the low level of the applicants' alleged involvement, but rather assessed as one the gravity of the infringement for all the undertakings concerned. In the applicants' opinion, that breaches the principle of individual responsibility.

Lastly, in the context of the ninth plea, the applicants complain that the level of the fine imposed breaches the principles of proportionality and equal treatment, in that the applicants did not participate in the most serious distortions of competition.

[1] Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 [EC] and 82 [EC] (OJ 2004 L 123, p. 18).

[2] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

Appeal brought on 1 September 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 22 June 2010 in Case F-78/09, Marcuccio v Commission

(Case T-366/10 P)

(2010/C 288/109)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— in any event, set aside in its entirety and without exception the order under appeal;

— declare that the action at first instance, in relation to which the order under appeal was made, was admissible in its entirety and without exception;

— uphold in its entirety and without any exception whatsoever the application lodged at first instance by the appellant;

— order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation both to the proceedings at first instance and to the present appeal proceedings;

— in the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal has been brought against the order of the Civil Service Tribunal (CST) of 22 June 2010. That order dismissed as manifestly inadmissible an action seeking compensation for the damage sustained by the appellant because of the Commission's refusal to reimburse him in respect of the costs incurred in the proceedings in Case T-18/04 *Marcuccio* v *Commission*.

In support of his claims, the appellant alleges the erroneous and unreasonable interpretation of the concept of 'request' for the purposes of Articles 90 and 91 of the Staff Regulations; total failure to state reasons; distortion and misrepresentation of the facts; and misinterpretation of the case-law on the recovery of costs which a party has been ordered to pay by the Court.

The appellant also alleges breach of the principle of *audi alteram partem* and of the rights of the defence and asserts that the CST failed to rule on a number of his claims.

Action brought on 3 September 2010 — Rubinetteria Cisal v Commission

(Case T-368/10)

(2010/C 288/110)

Language of the case: Italian

Parties

Applicant: Rubinetteria Cisal (Alzo Frazione di Pella, Italy) (represented by M. Pinnarò, lawyer)

Defendant: European Commission

Form of order sought

— Annulment of Decision C(2010) 4185 of 23 June 2010;

— alternatively, if the Court should not annul the fine imposed, reduction of the fine to a more appropriate sum;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

The decision contested in these proceedings is the same as that in Case T-364/10 *Duravit and Others* v *Commission*.

In support of its claims the applicant puts forward the following pleas in law:

I. Infringement and misapplication of Articles 101 TFEU and 53 EEA

In this regard, it is claimed that the decision, in so far as it concerns Cisal, is quite wrong, for Cisal has played no part (even an unwitting part) in any cartel, having merely exchanged non-sensitive business information which was unreserved and (in almost every case) later than the decisions taken independently and already spreading on the market.

II. Breach of the principles of proportionality and equal treatment

According to the applicant, the Commission failed to consider that the role, involvement, responsibility, advantages etc. of and for each producer differed significantly from one to another. Specifically, the defendant has drawn no distinctions and does not explain why the maximum penalty is to be imposed on Cisal, given that the latter: (i) was never a member of one of the two associations (Michelangelo); (ii) never had bilateral contacts; (iii) did not take part in meetings at which all three products were considered (but only taps, cocks and fittings and ceramic ware) and (iv) had always had only an insignificant share of the market.

So far as the fixing of the fine is concerned, the applicant maintains that the Commission ought to have taken into account and determined the actual effect of the infringement on the market and the extent of the relevant geographic market, and to have taken account of Cisal's actual economic ability to distort competition and of its specific weight.

The applicant alleges also that the basis used for computing the amount of the fine was incorrect, and that the Commission failed to have regard to mitigating circumstances.