

## Joined Cases T-22/02 and T-23/02

**Sumitomo Chemical Co. Ltd and Sumika Fine Chemicals Co. Ltd**

**v**

**Commission of the European Communities**

(Competition — Cartels in the vitamin sector — Commission Decision finding infringements that had ceased and not imposing fines — Regulation (EEC) No 2988/74 — Time-limit on the power of the Commission to impose fines or penalties — Principle of legal certainty — Presumption of innocence — Legitimate interest in finding that infringements have been committed)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 6 October 2005 . . . . . II - 4073

### Summary of the Judgment

1. *Competition — Administrative procedure — Powers of the Commission — Finding of an infringement that has ceased — Condition — Legitimate interest (Council Regulation No 17)*

2. *Community law — Interpretation — Texts in several languages — Uniform interpretation — Differences between the various language versions — General scheme and purpose of the rules in question as a reference point*
  
3. *Competition — Administrative procedure — Time-limit with regard to proceedings — Meaning of ‘penalties’ in Regulation No 2988/74 — Pecuniary penalties — Included — Decision finding an infringement — Not included  
(Council Regulation No 2988/74, Art. 1(1))*
  
4. *Competition — Administrative procedure — Powers of the Commission — Power to find an infringement separate from the power to order the ending of an infringement and to impose a fine — Effect that a time bar on the power to impose a fine has on the power to find an infringement — No effect  
(Council Regulations Nos 17 and 2988/74, Art. 1(1))*
  
5. *Community law — General principles of law — Legal certainty — No rule laying down a time-limit on the exercise of the Commission’s powers — Infringement of the principle of legal certainty by the Community legislature — None*
  
6. *Actions for annulment — Commission decision in a case in which there is no rule prescribing a time-limit on the exercise of its powers — Compliance with requirements of legal certainty — Judicial review — Limits  
(Art. 230 EC)*
  
7. *Community law — General principles — Recognition — Rule existing in the legal systems of all the Member States — Insufficient for recognition*
  
8. *Community law — Interpretation — Principles — Independent interpretation — Limits — Reference in certain cases to the law of the Member States*

9. *Community law — Principles — Fundamental rights — Presumption of innocence — Procedure in competition matters — Applicability — Finding, after a lawful procedure, that the perpetrator of an infringement is responsible for it although a fine may not be imposed on him on account of the limitation period — Breach — None*  
(Art. 6 EU)
10. *Competition — Administrative procedure — Powers of the Commission — Finding of an infringement that has ceased — Rules for doing so — Demonstration, by reference to the specific circumstances, of its legitimate interest*  
(Council Regulation No 17)

1. Regulation No 17 has authorised the Commission to require undertakings to bring to an end any infringement which it establishes and to impose fines and periodic penalty payments in respect of an infringement of the competition rules. The power to take decisions of such a type necessarily implies a power to make a finding that the infringement in question exists.

mental effects and, second, the Commission may take a decision finding an infringement which the undertaking has already terminated, on condition, however, that the Commission has a legitimate interest in so doing.

(see paras 36-37, 130)

The cessation of an infringement prior to the adoption of a decision by the Commission does not in itself constitute an obstacle to the Commission's exercise of its powers to find and penalise an infringement of the competition rules. In that respect, first, the Commission's power to impose penalties is in no way affected by the fact that the conduct constituting the infringement has ceased and that it can no longer have detri-

2. For the purposes of a literal interpretation of a provision of Community law, it must be borne in mind that Community legislation is drafted in various languages and that the different language versions are all equally authentic; an interpretation of such a provision thus involves a comparison of the different language versions.

Whilst the need for a uniform interpretation of Community regulations

means that a particular provision should not be considered in isolation but, in cases of doubt, should be interpreted and applied in the light of the other official languages, in the event of divergence between language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

More generally, in interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs, the objects of the rules of which it is part, and the provisions of Community law as a whole.

of the European Economic Communities relating to transport or competition subject to one and the same system of limitation, regardless of the name adopted for those penalties in the texts establishing them.

A decision finding an infringement is not a penalty within the meaning of Article 1(1) of Regulation No 2988/74 and is not therefore covered by the limitation period laid down by that provision.

(see paras 60-61)

(see paras 42, 46-47)

3. The term 'penalties' in Article 1(1) of Regulation No 2988/74 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition seeks merely to make the Commission's power to impose pecuniary penalties for infringements of the rules
4. Whilst under the system established by Regulation No 17 the Commission's power to find an infringement arises only implicitly, inasmuch as the express powers to order cessation of the infringement and to impose fines necessarily imply this power, such an implied power is not however dependent solely on the exercise by the institution of those express powers. It is not therefore possible to deny that such a power is

autonomous, or that this autonomy is unaffected by the fact that the exercise of that power has been made subject to the existence of a legitimate interest of the Commission.

Accordingly, the fact that the Commission no longer has the power to impose fines on persons committing an infringement on account of the expiry of the limitation period referred to in Article 1(1) of Regulation No 2988/74 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition does not in itself preclude the adoption of a decision finding that that past infringement has been committed.

(see paras 63, 131)

5. In order to fulfil its function of ensuring legal certainty, a limitation period must be fixed in advance and the fixing of its duration and the detailed rules for its application fall within the competence of the Community legislature.

The limitation period, by preventing situations which arose a long time previously from being indefinitely brought into question, tends to

strengthen legal certainty but can also allow the acceptance of situations which at least in the beginning were unlawful. The extent to which provision is made for it is therefore the result of a choice between the requirements of legal certainty and those of legality, on the basis of the historical and social circumstances prevailing in a society at a given time. It is therefore a matter for the legislature alone to decide.

It is not therefore open to the Community judicature to criticise the Community legislature for the choices it makes concerning the introduction of rules on limitation and the setting of the corresponding time-limits. The failure to set a limitation period for the exercise of the Commission's powers to find infringements of Community law is not therefore in itself unlawful from the point of view of the principle of legal certainty.

(see paras 81-83)

6. It is not for the Community judicature to fix the time-limits, scope or detailed rules for the application of the limitation

period in respect of an infringement, whether generally or in relation to specific cases of which they are seised. Nevertheless, the absence of legislative limitation does not preclude censure of the Commission's action, in a specific case, in the light of the principle of legal certainty. In the absence of any provision laying down a limitation period, the fundamental requirement of legal certainty has the effect of preventing the Commission from indefinitely delaying the exercise of its powers.

in particular of the time when the institution became aware of the acts constituting the infringement and of the reasonableness of the duration of the administrative procedure

(see paras 87-89)

Accordingly, the Community judicature, when examining a complaint alleging that the Commission's action was too late, must not merely find that no limitation period exists, but must establish whether the Commission acted excessively late.

7. The fact that the legal systems of all the Member States contain the same rule cannot suffice for its recognition in Community law as a general principle of Community law.

(see paras 97, 99)

However, the question whether the Commission acted excessively late must not be assessed solely on the basis of the time which elapsed between the events which form the subject-matter of the action and the commencement of the action itself. On the contrary, the Commission cannot be regarded as having acted excessively late if there is no delay or other negligent act imputable to it and account should be taken

8. The terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent interpretation and that interpretation must take into account the context of the provision and the purpose of the relevant rules.

In particular, in the absence of an express reference, the application of

Community law may necessitate a reference to the laws of the Member States where the Community judicature cannot identify, in Community law or in the general principles of Community law, criteria enabling it to define the meaning and scope of a Community provision by way of independent interpretation.

person for a particular infringement in a final decision unless that person has enjoyed all the usual guarantees accorded for the exercise of the rights of the defence in the normal course of proceedings resulting in a decision on the merits of the case.

(see paras 100-101)

9. The presumption of innocence as contained in particular in Article 6(2) of the European Convention on Human Rights is among the fundamental rights which, according to Article 6(2) EU, are protected in the Community legal order.

The presumption of innocence does not, on the other hand, preclude a person accused of a particular infringement being found liable at the end of proceedings which have fully taken place, in accordance with the rules prescribed and in the course of which the rights of the defence could thus be fully exercised, and this is so even if a penalty cannot be imposed on the person committing the infringement because the relevant power of the competent authority is time-barred.

It applies to the procedures relating to infringement of the competition rules applicable to undertakings that may result in the imposition of fines or periodic penalty payments.

(see paras 104-107)

The presumption of innocence implies that every person accused is presumed to be innocent until his guilt has been established according to law. It thus precludes any formal finding and even any allusion to the liability of an accused

10. As regards the method of exercising its powers to find, by way of a decision, that there was an infringement of the competition rules which has ceased, the Commission errs in law where it fails to consider, when adopting the decision, whether the finding was justified by a legitimate interest. The Commission may not merely make a general refer-

ence to, for example, the need to promote exemplary behaviour on the part of the undertakings, the interest in discouraging any repeated infringement, given the particularly serious nature of the infringements in question, and the interest in enabling the injured parties to bring matters before the national civil courts. It must demonstrate by circumstances specific to the case in point that

those situations are established and therefore show its legitimate interest in adopting a decision finding that infringement.

(see paras 132, 136-138)