ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

16 December 2004 *

In Case T-410/03,

Hoechst AG, established in Frankfurt am Main (Germany), represented by M. Klusmann, M. Rüba, lawyers, and V. Turner, Solicitor,

applicant,

v

Commission of the European Communities, represented by W. Mölls, O. Beynet and K. Mojzesowicz, acting as Agents, assisted by A. Böhlke, lawyer, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

APPLICATION for annulment, so far as concerns the applicant, of Commission Decision C(2003) 3426 final of 1 October 2003 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/E-1/37.370 — Sorbates), or, in the alternative, for reduction of the amount of the fine imposed on the applicant to an appropriate level,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges,

Registrar: H. Jung,

makes the following

Order

Background to the dispute

1 By Decision C(2003) 3426 final of 1 October 2003 (Case COMP/E-1/37.370 — Sorbates) ('the decision'), the Commission found that a number of undertakings had infringed Article 81(1) EC and Article 53 of the Agreement on the European Economic Area (EEA) by participating in a cartel in the sorbates market. Those undertakings included, notably, Hoechst AG ('Hoechst') and Chisso Corporation ('Chisso'), established in Tokyo (Japan).

2 On that basis, the Commission decided to impose fines on the undertakings concerned. In fixing the amount of those fines, the Commission applied, in turn, the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) [CS] (OJ 1998 C 9, p. 3) and its Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).

3 For its participation in the cartel, Hoechst was given a fine of EUR 99 million (Article 3(b) of the decision). That fine reflected, inter alia, the role as leader of the cartel which Hoechst, together with the company Daicel, established in Tokyo (Japan), had played (recitals 363 to 375 of the decision). Hoechst nevertheless benefited from a 50% reduction in the amount of the fine for having cooperated in the investigation (recitals 455 to 466 of the decision).

4 With regard to Chisso, the Commission found that it had been the first to provide decisive evidence in the course of the investigation. On that basis, it received total immunity and no fine was imposed on it (recitals 439 to 447 of the decision).

Procedure

5 By application lodged at the Registry of the Court of First Instance on 18 December 2003, Hoechst brought an action for annulment of the decision, so far as concerns it, or, in the alternative, for reduction to an appropriate level of the amount of the fine imposed on it.

6 On 26 April 2004, Chisso applied to intervene in the main proceedings in support of the Commission.

7 By document lodged at the Court Registry on 1 June 2004, the Commission stated that it had no observations to make with regard to the application to intervene.

8 By document lodged at the Court Registry on 15 June 2004, Hoechst claimed that the Court should dismiss the application to intervene and order Chisso to pay the costs.

9 In accordance with the third paragraph of Article 116(1) of the Rules of Procedure of the Court of First Instance, the President of the Fifth Chamber referred the present application to intervene to that chamber.

Law

Arguments of the parties

10 Chisso states, first of all, that the action in the main proceedings seeks the annulment of a decision addressed specifically to it. In that regard, Chisso states that it informed the Commission voluntarily of the existence of a cartel in the sorbates market and provided it with decisive evidence to that effect. That circumstance on its own proves the existence of a sufficient interest.

11 In addition, Chisso submits that it is directly affected by Hoechst's claim that the Commission erred in not treating it as the first undertaking to cooperate. Chisso states in that regard that it was correctly regarded by the Commission as the first undertaking to cooperate, in the light of a number of facts to which it draws attention. Consequently, if the Court were to concur with Hoechst's arguments, Chisso would no longer satisfy the conditions necessary to benefit from total immunity and from a reduction in the fine.

12 Hoechst, for its part, submits that Chisso is not the addressee of the decision issued with regard to Hoechst. That decision alone is the subject-matter of the present action. Even if that decision were held to be addressed both to Chisso and to it, Hoechst submits that Chisso does not have a legitimate interest in intervening. In that regard, Hoechst points out that, if it were to be successful in this action, the amendment of Article 3(b) of the decision would not alter in any way the other provisions of the decision, including those concerning Chisso. Relying in particular on the order made by the Court of First Instance in Case T-15/02 *BASF* v *Commission* [2003] ECR II-213, Hoechst further states that the principle *non bis in idem* prohibits the Commission from making a fresh assessment on the merits of the infringement which is the subject-matter of the decision. In any event, even if the Commission were able to alter the decision with regard, in particular, to Chisso, the latter's interest in preventing such a re-assessment would not be direct and existing but only indirect and potential.

Findings of the Court

13 Under the second paragraph of Article 40 of the Statute of the Court of Justice, which applies to proceedings before the Court of First Instance by virtue of the first paragraph of Article 53 of that Statute, any person establishing an interest in the result of a case, save in cases between Member States, between institutions of the Community or between Member States and institutions of the Community, has the right to intervene.

14 It has consistently been held that the concept of an interest in the result of the case, within the meaning of that provision, must be defined in the light of the precise subject-matter of the dispute and be understood as meaning a direct, existing interest in the ruling on the forms of order sought and not as an interest in relation to the pleas in law or arguments put forward. The expression 'result' is to be understood as meaning the operative part of the final judgment which the parties ask the Court to deliver. It is necessary, in particular, to ascertain whether the intervener is directly affected by the contested act and whether its interest in the result of the case is established. It is also settled case-law that it is necessary to distinguish between prospective interveners establishing a direct interest in the ruling on the specific act annulment of which is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties (order of the President of the Court of Justice in Joined Cases C-151/97 P(I) and C-157/97 P(I) *National Power and PowerGen* [1997] ECR I-3491, paragraphs 51 to 53 and 57; order in *BASF* v *Commission*, cited in paragraph 12 above, paragraphs 26 and 27; and order of the Court of First Instance in Case T-14/00 *Ulestraten, Schimmert en Hulsberg and Others* v *Commission* [2004] ECR II-497, paragraphs 11 and 12).

15 In this case, it should be noted, first, that, by the forms of order sought, Hoechst 'claims that the Court should ... 1. annul the [decision], so far as concerns [it]; ... 2. in the alternative, reduce the amount of the fine imposed ... in the [decision] to an appropriate level'.

16 It must be pointed out, secondly, that, although the decision is drafted in the form of a single decision, it must be treated as a bundle of individual decisions making findings of infringements against the undertakings to which it is addressed and, where appropriate, imposing fines; moreover, that assessment is substantiated by the wording of its operative part, and in particular by Articles 1 and 3 (see, to the same effect, order in *BASF* v *Commission*, cited in paragraph 12 above, paragraph 31, and the case-law cited).

17 It must be recalled, thirdly, that, since it would be ultra vires for the Community judicature to rule *ultra petita*, the scope of the annulment which it pronounces may

not go further than that sought by the applicant. Consequently, if an addressee of a decision decides to bring an action for annulment, the matter to be tried by the Community judicature relates only to those aspects of the decision which concern that addressee. Unchallenged aspects concerning other addressees, on the other hand, do not form part of the matter to be tried by the Community judicature (Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraphs 52 and 53, and Case C-239/99 *Nachi Europe* [2001] ECR I-1197, paragraphs 24 and 25).

18 It should be noted, finally, that, although the authority *erga omnes* of an annulling judgment of a court of the Community judicature attaches to both the operative part and the necessary supporting grounds, it cannot entail annulment of an act not challenged before the Community judicature but alleged to be vitiated by the same illegality. The only purpose of considering the grounds of the judgment which set out the precise reasons for the illegality found by the Community judicature is to determine the exact meaning of the ruling made in the operative part of the judgment. The authority of a ground of a judgment annulling a measure cannot apply to the situation of persons who were not parties to the proceedings and with regard to whom the judgment cannot therefore have decided anything whatever (judgment in *Commission* v *AssiDomän Kraft Products and Others*, cited in paragraph 17 above, paragraphs 54 and 55).

19 In those circumstances, the provisions of the decision which concern Chisso would not be affected by a judgment of the Court annulling the decision so far as Hoechst is concerned or varying the amount of the fine imposed on Hoechst.

20 Consequently, Chisso has an interest in rejection of the form of order sought by Hoechst in the main proceedings only in so far as the abovementioned annulment or variation, which would call into question the validity of the findings and assessments concerning it, as set out in the decision, could lead the Commission to reverse the immunity granted to it.

21 However, even on the assumption that the Commission could alter the provisions of the decision conferring immunity on Chisso, the interest referred to in paragraph 20 above would not be a direct, existing interest within the meaning of the case-law but, at the most, an indirect, potential interest. Furthermore, in such a hypothesis, Chisso would still be able to put forward its arguments in an action for annulment which it could bring before the Court of First Instance against such an unfavourable Commission decision (see, to the same effect, order in *BASF* v *Commission*, cited in paragraph 12 above, paragraph 37).

22 In the light of all those considerations, it must be concluded that the interest relied on by Chisso cannot be regarded as a direct, existing interest in the result of the case, as referred to in the second paragraph of Article 40 of the Statute of the Court of Justice. Accordingly, its application to intervene must be dismissed.

Costs

23 Under Article 87(1) of the Rules of Procedure, a decision as to costs is to be given in the final judgment or in the order which closes the proceedings. Since the present order closes the proceedings so far as Chisso is concerned, the Court must make an order in respect of the costs associated with its application to intervene.

24 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Chisso has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by Hoechst in connection with the present intervention proceedings, in accordance with the form of order sought by Hoechst. As the Commission has made no application for costs, it must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **The application to intervene is dismissed.**

2. **Chisso shall pay the costs incurred by Hoechst in connection with the intervention proceedings and bear its own costs.**

3. **The Commission shall bear its own costs in connection with the intervention proceedings.**

Luxembourg, 16 December 2004.

H. Jung

Registrar

M. Vilaras

President