

**Pleas in law and main arguments**

The applicant maintains that:

- 1) the CFI infringed Article 15(2) of Regulation No. 17/62/EEC ('Regulation 17')<sup>(1)</sup> by holding that the Commission lawfully applied the 10 % turnover cap under Article 15(2) to Britannia's turnover for the business year ending 30 June 1996, rather than the business year preceding the adoption of the Decision;
- 2) the CFI infringed the principle of equality:
  - a) by upholding the Commission's discrimination between undertakings being in essentially the same situation by applying the 10 % turnover cap, in the case of Britannia, to the last year of what the Commission considers 'normal economic activity', and, in the case of all other undertakings to whom the Decision was addressed, to the business year preceding the Decision; and
  - b) by upholding the Commission's Decision which discriminates against Britannia in relation to the year to which the 10 % turnover cap is applicable in comparison with its practice in other directly comparable cases;
- 3) the CFI infringed the principle of legal certainty:
  - a) by upholding the Commission's use of a year other than the preceding business year in applying the turnover cap in Article 15(2) of Regulation 17. Certainty is required as to the absolute maximum level of penalty that might be imposed; and
  - b) by interpreting Article 15(2) Regulation 17 in a way which imposes a penalty which does not correspond to the penalty laid down when the infringement was committed, thereby infringing the fundamental rights of undertakings.

<sup>(1)</sup> EEC Council: Regulation no 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ 013, 21.02.1962, p. 204-211)

**Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 10 February 2006 — Staat der Nederlanden (Ministerie van Volksgezondheid, Welzijn en Sport) v 1. Antroposana, Patiëntenvereniging voor Antroposofische Gezondheidszorg, 2. Nederlandse Vereniging van Antroposofische Artsen, 3. Weleda Nederland NV and 4. Wala Nederland NV**

(Case C-84/06)

(2006/C 108/04)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden (Supreme Court of the Netherlands)

**Parties to the main proceedings**

*Applicant:* Staat der Nederlanden (Ministerie van Volksgezondheid, Welzijn en Sport) (State of the Netherlands (Ministry of Public Health, Welfare and Sport))

*Defendants:* 1. Antroposana, Patiëntenvereniging voor Antroposofische Gezondheidszorg, 2. Nederlandse Vereniging van Antroposofische Artsen, 3. Weleda Nederland NV and 4. Wala Nederland NV

**Questions referred**

1. Does Directive 2001/83/EC<sup>(1)</sup> of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use oblige Member States to make anthroposophic medicinal products which are not at the same time homeopathic medicinal products subject to the requirements in respect of authorisation as set out in Title III, Chapter 1, of that directive?
2. If the answer to Question 1 is in the negative: is the Netherlands statutory provision which makes those anthroposophic medicinal products subject to the aforementioned requirements in respect of authorisation an exception to the prohibition under Article 28 EC which is authorised by virtue of Article 30 EC?

<sup>(1)</sup> OJ L 311, p. 67.