

Appeal brought on 22 February 2019 by Niche Generics Ltd against the judgment of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-701/14: Niche Generics v Commission

(Case C-164/19 P)

(2019/C 148/29)

Language of the case: English

Parties

Appellant: Niche Generics Ltd (represented by: F. Carlin, Barrister, M. Healy, Solicitor, B. Hoorelbeke, advocaat, S. Mobley, Solicitor, H. Sheraton, Solicitor, A. Robertson QC)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- Annul the Contested Judgment in its entirety;
- Annul the Contested Decision in its entirety in so far its relates to Niche; and
- Order the Commission to pay its own costs and Niche's costs in connection with these proceedings and the proceedings before the General Court.

Pleas in law and main arguments

Niche submits the General Court erred in law:

- First, the General Court erred in law by not applying the objective necessity test in BAT.
- Second, in the event that settlement agreements fall within Art. 101 TFEU, the General Court erred in law by mischaracterising Niche's settlement agreement as a 'by object' violation.
- Third, the General Court infringed Art. 36 of the Statute of the Court of Justice duty to state reasons when it rejected Niche's interpretation of the settlement agreement without addressing its legal arguments.
- Fourth, the General Court erred in law by concluding Niche was a potential competitor to Servier.
- Fifth, the General Court infringed the fundamental principle of equal treatment by treating Niche differently to similarly situated generics and erroneously characterising Niche's settlement agreement as an Art. 101(1) TFEU 'by object' violation.
- Sixth, the General Court erred in law by not recognising that the settlement agreement satisfies the exemption criteria under Art.101(3) TFEU.

- Seventh, the General Court erred in law by misapplying the legal test for determining a breach of Niche's rights of defence and/or the principle of sound administration.
- Eighth, the General Court infringed the general EU law principle of proportionality by confirming a level of fine that was disproportionate to Niche's financial means.

**Appeal brought on 22 February 2019 by Slovak Telekom, a.s. against the judgment of the General Court
(Ninth Chamber, Extended Composition) delivered on 13 December 2018 in Case T-851/14: Slovak Telekom v
Commission**

(Case C-165/19 P)

(2019/C 148/30)

Language of the case: English

Parties

Appellant: Slovak Telekom, a.s. (represented by: D. Geradin, Rechtsanwalt, R. O'Donoghue QC)

Other parties to the proceedings: European Commission, Slovanet, a.s.

Form of order sought

The appellant claims that the Court should:

- set aside of the judgment of the General Court, in whole or in part;
- annul the Decision, in whole or in part;
- in the alternative, annul or further reduce the fines imposed on ST; and
- order the Commission to pay all costs related to the present proceedings and the proceedings before the General Court.

Pleas in law and main arguments

- First Plea — Errors of law and/or a manifest error or lack of reasoning on refusal to deal:
 - First Sub-Plea: ST submits that the General Court's finding that the Bronner conditions for refusal to supply under Article 102 TFEU do not apply where there is an ex ante regulatory access obligation is incorrect. Moreover, the argument of the General Court that the Bronner condition of 'indispensability' did not need to be satisfied since an ex ante regulation had already acknowledged 'the need for access to the applicant's local loop' and that, accordingly, the Commission did not need to (re)examine 'indispensability' under Article 102 is an error of law.
 - Second Sub-Plea: ST submits that the General Court's finding that the CJEU judgment in TeliaSonera supports the proposition that the refusals to deal engaged in by ST do not require a demonstration that the Bronner conditions are satisfied is an error of law.
 - Third Sub-Plea: ST submits that General Court's finding that the General Court's Clearstream judgement should be distinguished from ST case because, unlike ST, it did not involve a former State monopoly or an ex ante regulatory access obligation is an error of law.