

Parties to the main proceedings

Appellants: Belgische Staat, vertegenwoordigd door de Minister van Werk, Economie en Consumenten, belast met Buitenlandse handel, Belgische Staat, vertegenwoordigd door de Directeur-Generaal van de Algemene Directie Economische Inspectie, Directeur-Generaal van de Algemene Directie Economische Inspectie

Respondents: Movic BV, Events Belgium BV, Leisure Tickets & Activities International BV

Question referred

Is an action concerning a claim aimed at determining and stopping infringing market practices and/or commercial practices towards consumers, instituted by the Belgian Government in respect of Dutch companies which from the Netherlands, via websites, focus on a mainly Belgian clientele for the resale of tickets for events taking place in Belgium, pursuant to Article 14 of the wet van 30 juli 2013 betreffende de verkoop van toegangsbewijzen tot evenementen (Law of 30 July 2013 regarding the sale of admission tickets to events) and pursuant to Article XVII.7 WER, a civil or commercial matter within the meaning of Article 1(1) of the European Regulation 1215/2012 ⁽¹⁾ of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and can a judicial decision in such a case, for that reason, fall within the scope of that Regulation?

⁽¹⁾ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

Appeal brought on 22 February 2019 by the European Commission against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 12 December 2018 in Case T-691/14, *Servier and Others v Commission*

(Case C-176/19 P)

(2019/C 139/36)

Language of the case: French

Parties

Appellant: European Commission (represented by: B. Mongin, F. Castilla Contreras, J. Norris, C. Vollrath, acting as Agents)

Other parties to the proceedings: Servier SAS, Servier Laboratories Ltd, Les Laboratoires Servier SA, European Federation of Pharmaceutical Industries and Associations (EFPIA)

Form of order sought

The appellant claims that the Court should:

- set aside points 1, 2, and 3 of the operative part of the judgment, which annul (i) Article 4 of Commission Decision C(2014) 4955 final of 9 July 2014 relating to a proceeding under Article 101 and Article 102 TFEU (Case AT.39612 — Perindopril (Servier)) in so far as it finds that Servier participated in the agreements concluded between Servier and the company Krka, (ii) Article 7(4)(b) of the decision which sets the fine imposed on Servier for concluding those agreements, (iii) Article 6 of the decision which finds that Servier infringed Article 102 TFEU and (iv) Article 7(6) of the decision which sets the amount of the fine imposed on Servier in relation to that infringement;

- set aside the judgment in so far as it declares Annexes A 286 and A 287 to the application and Annex C 29 to the reply admissible (paragraphs 1461, 1462 and 1463 of the judgment);
- give final judgment on Servier's action for annulment of the decision and reject Servier's request for annulment of Articles 4, 7(4)(b), 6 and 7(6) of the decision and uphold the Commission's claim that Annexes A 286 and A 287 to the application before the General Court and Annex C 29 to the reply before the General Court should be declared inadmissible (paragraphs 1461 to 1463 of the judgment);
- order Servier to bear all the costs of the present appeal.

Pleas in law and main arguments

In support of the appeal, the Commission relies on a *first group of grounds* concerning the infringement of Article 101 TFUE (setting aside of points 1 and 3 of the operative part of the judgment in so far as they annul Articles 4 and 7(4)(b) of the decision finding that the three agreements concluded between Servier and Others and the company Krka constituted a single infringement of Article 101 TFEU and ordering Servier to pay a fine).

The first ground alleges that the General Court erred in law in finding that Krka was not a source of competitive pressure on Servier when the agreements in question were concluded.

The second ground alleges that the General Court erred in law in assessing the content and the objectives of the licence agreement as an inducement for Krka to accept the restrictions set out in the settlement.

The third ground alleges that the General Court erred in law in the application of the concept of a restriction by object within the meaning of Article 101(1) TFEU.

The fourth ground alleges that the General Court erred in law in the analysis of the parties' intentions for the application of Article 101 TFUE.

The fifth ground alleges that the General Court erred in law in taking into account the pro-competitive effects of the licence on markets which do not fall within the scope of the infringement of Article 101(1) TFEU identified in the decision.

The sixth ground alleges that the General Court erred in law in analysing the object of the transfer agreement.

The seventh ground alleges an error of law in the application of the concept of a restriction of competition by effect for the purpose of Article 101(1) TFEU.

In addition, the Commission relies on a *second group of grounds* concerning the infringement of Article 102 TFEU (setting aside of points 2 and 3 of the operative part of the judgment in so far as they annul Articles 6 and 7(6) of the decision finding that Servier infringed Article 102 TFEU and ordering Servier to pay a fine).

The eighth ground alleges that the General Court erred in law in its analysis of the consideration of the price criterion in the determination of the market for the finished products.

The ninth ground alleges that the General Court erred in law in its analysis of the consideration of therapeutic substitutability in the determination of the market for the finished products.

The tenth ground alleges that certain annexes are inadmissible.

The eleventh ground alleges that the General Court erred in law in its analysis of the technology market.
