

### Question referred

Must Article 27 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person <sup>(1)</sup> (recast), considered alone or in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as requiring a national court, in order to guarantee the right to an effective remedy, to take into consideration, where appropriate, circumstances arising subsequent to a 'Dublin transfer' decision?

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<sup>(1)</sup> OJ 2013 L 180, p. 31.

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**Appeal brought on 28 February 2019 by Mylan Laboratories Ltd, Mylan, Inc. against the judgment of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-682/14: Mylan Laboratories and Mylan v Commission**

**(Case C-197/19 P)**

(2019/C 164/31)

*Language of the case: English*

### Parties

*Appellants:* Mylan Laboratories Ltd, Mylan, Inc. (represented by: C. Firth, S. Kon, C. Humpe, Solicitors, V. Adamis, advocate)

*Other party:* European Commission

### Form of order sought

The appellants claim that the Court should:

- set aside the judgment of the General Court in Case T-682/14 Mylan Laboratories Ltd and Mylan Inc. v European Commission insofar as it dismisses their application to annul the Decision of the Commission of 9 July 2014 <sup>(1)</sup> in Case AT.39612 — Perindopril (Servier) insofar as it concerns the applicants; or
- annul or substantially reduce the fine; and/or
- refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice; and
- order the Commission to pay the appellants' legal and other costs and expenses in relation to this matter and any other measures that the Court of Justice considers appropriate.

### Pleas in law and main arguments

In support of the action, the appellants rely on five grounds of appeal supported by the following pleas.

1. First Ground of Appeal: The General Court erred in law in finding that Matrix and Les Laboratoires Servier were potential competitors at the time of the settlement.

First plea: The General Court was wrong to conclude that the Commission was entitled to consider that Matrix and Niche could be classified as potential competitors on the basis of the Niche/Matrix Agreement.

Second plea: The General Court misapplied the legal test for potential competition in reaching the conclusion that Matrix and Servier were potential competitors at the time of entering into the Settlement.

2. Second Ground of Appeal: The General Court erred in law in finding that the settlement had the object of restricting competition.

First plea: The General Court has erred in finding that a patent settlement can have the object of restricting competition even though the terms of that settlement are within the scope of the patent.

Second plea: The General Court has erred in deriving the existence of a restriction of competition by object from the alleged inducement represented by the payment made by Servier to Matrix.

Third plea: The General Court erred in the manner in which it inferred the existence of an inducement from the payment received by Matrix.

3. Third Ground of Appeal: The General Court erred in declining to rule on the Commission's classification of the settlement as a restriction of competition by effect.
4. Fourth Ground of Appeal: The General Court erred in law in finding that Mylan Inc. exercised decisive influence over the conduct of Matrix during the relevant period.
5. Fifth Ground of Appeal: The General Court has infringed Article 23 of Regulation 1/2003 <sup>(?)</sup> and the principles of *nullum crimen nula poena sine lege*, and legal certainty in finding that a fine could be imposed on the appellants.

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<sup>(1)</sup> Summary of Commission Decision of 9 July 2014 relating to a proceeding under Articles 101 and 102 of the Treaty on the Functioning of the European Union (Case AT.39612 — Perindopril (Servier)) (notified under document C(2014) 4955), OJ 2016, C 393, p. 7

<sup>(2)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ 2003, L 1, p. 1

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**Appeal brought on 28 February 2019 by Teva UK Ltd, Teva Pharmaceuticals Europe BV, Teva Pharmaceutical Industries Ltd against the judgment of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-679/14: Teva UK Ltd and Others v Commission**

**(Case C-198/19 P)**

(2019/C 164/32)

*Language of the case: English*

**Parties**

*Appellants:* Teva UK Ltd, Teva Pharmaceuticals Europe BV, Teva Pharmaceutical Industries Ltd (represented by: D. Tayar, avocat, A. Richard, avocate)

*Other parties to the proceedings:* European Generic medicines Association AISBL (EGA), European Commission