Appeal brought on 28 February 2019 by Servier SAS, Servier Laboratories Ltd, Les Laboratoires Servier SA 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-201/19 P)

(2019/C 139/37)

Language of the case: French

Parties

Appellants: Servier SAS, Servier Laboratories Ltd, Les Laboratoires Servier SA (represented by: M. Utges Manley, Solicitor, A. Robert, advocate, J. Killick, J. Jourdan, T. Reymond, O. de Juvigny, avocats)

Other parties to the proceedings: European Commission, European Federation of Pharmaceutical Industries and Associations (EFPIA)

Form of order sought

The appellants claim that the Court should:

Primarily, in the light of grounds 1 to 5 challenging the finding of an infringement of Article 101 TFEU:

— set aside points 4, 5 and 6 of the operative part of the judgment delivered by the General Court on 12 December 2018 in Case T-691/14, *Servier* v *Commission*;

— annul Articles 1(b), 2(b), 3(b) and 5(b) and, consequently, Articles 7(1)(b), 7(2)(b), 7(3)(b) and 7(5)(b) of Commission Decision C(2014) 4955 final of 9 July 2014 (Case AT.39612 — Perindopril (Servier)), or, in the alternative, refer the case back to the General Court for adjudication on the effects of the agreements concerned;

In the alternative, in the light of ground 6:

— set aside points 4 and 5 of the operative part of the judgment in so far as they confirm the conclusions in the contested decision concerning the existence of separate infringements and cumulative fines in respect of the Niche and Matrix agreements and, consequently, annul Articles 1(b), 2(b), 7(1)(b) and 7(2)(b) of the decision;

And in the alternative:

— set aside points 4 and 5 of the operative part of the judgment and annul Articles 7(1)(b), 7(2)(b), 7(3)(b) and 7(5)(b) of the decision in the light of grounds 7.1 and 7.2 challenging the principle and the amount of all the fines;

— annul point 5 of the operative part of the judgment and Articles 5(b) and 7(5)(b) of the decision in the light of ground 5.4 concerning the duration of the alleged infringement and the calculation of the fine in relation to the agreement between Servier and Lupin and, consequently, set the fine, in the exercise of the Court's unlimited jurisdiction.

And in any event:

— order the European Commission to pay the costs.

Grounds of appeal and main arguments

By the first ground, which concerns all the agreements penalised, Servier submits that the judgment is vitiated by an error of law in that it is based on a broad interpretation of the concept of a restriction by object, which is not in accordance with the case-law. The judgment disregards the absence of experience and of an obvious restriction and is based on a mechanical test which ignores the context and the ambivalent effects of the settlement agreements at issue.

By the second ground, which also concerns all the agreements in question, Servier submits that, in the judgment, the General Court incorrectly applied the case-law concerning the concept of potential competition and that it is based on an unjustified reversal of the burden of proof.

The third ground alleges that the agreements concluded on the same day with Matrix and its distributor Niche are not anti-competitive by object. According to Servier, the General Court erred in law by classifying those companies as potential competitors and by regarding the payments as harmful and not inherent in the settlement agreement.

By its fourth ground, Servier alleges errors of law in relation to the agreement with Teva, which is also not anti-competitive by object in view of the legal and economic context of which it forms part, its ambivalent effects and the complementarity of the parties, since Teva is, unlike Servier, a generics distributor in the United Kingdom.

The fifth ground alleges errors of law concerning the agreement with Lupin. The General Court should have examined the effects of the agreement because of its scope, which is at the least ambivalent, if not pro-competitive. In the alternative, the appellants argue that duration of the infringement, and therefore the calculation of the fine, is vitiated by an error.

In the alternative, Servier submits, in the sixth ground, that the General Court should have annulled the decision in so far as it penalises the agreement concluded with Matrix in addition to that concluded with Niche even though they are not separate infringements.

In the further alternative, the seventh ground concerns the claim that the judgment should be set aside in so far as it validates the method of determining the fine.

Appeal brought on 28 February 2019 by Biogaran against the judgment of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-677/14, Biogaran v Commission

(Case C-207/19 P)

(2019/C 139/38)

Language of the case: French

Parties

Appellant: Biogaran (represented by: M. Utges Manley, Solicitor, A. Robert, advocate, O. de Juvigny, T. Reymond, J. Killick, J. Jourdan, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court delivered on 12 December 2018 in Case T-677/14 in its entirety;

— annul Articles 1(b)(iv), 7(1)(b) and 8 of Commission Decision C(2014) 4955 final (Case AT.39612 — Perindopril (Servier)), in so far as they concern Biogaran;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

By its first ground of appeal, Biogaran submits that the judgment is vitiated by errors of law in that it finds the licence to be infringing on the ground that the settlement agreement has an anti-competitive object. According to the applicant, the judgment is based on a broad interpretation of the concept of a 'by object' infringement and disregards the absence of experience and of an obvious restriction. Moreover, the judgment is based on an incorrect legal test which ignores both the context of the settlement agreement between Servier and Niche and the fact that those undertakings were not potential competitors.