

**Action brought on 9 April 2013 — Telefónica v Commission****(Case T-216/13)**

(2013/C 156/100)

*Language of the case: Spanish***Parties**

*Applicant:* Telefónica, SA (Madrid, Spain) (represented by: J. Folguera Crespo, P. Vidal Martínez and E. Peinado Iribar, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul Articles 1 and 2 of the decision of the Commission of 23 January 2013 in so far as they concern the applicant, or, in the alternative
- declare Article 2 of the contested decision partially null and void and reduce the amount of the fine imposed, and
- order the Commission to pay the costs.

**Pleas in law and main arguments**

The contested decision in the present proceedings is the same as that in Case T-208/13 *Portugal Telecom v Commission*.

In support of the action, the applicant relies on five main pleas in law.

1. First plea in law, alleging infringement of Article 101 TFEU

- It is claimed in this regard that the contested decision incorrectly applies the case-law relating to restrictions by object and infringes the principles of the presumption of innocence, burden of proof and ‘*in dubio pro reo*’ as regards the content of clause nine of the purchase

agreement. It is claimed, in particular on this point, that the clause was linked to the transaction and cannot be construed or applied outside of that context and of a difficult negotiation process characterised by on-going interference by the Portuguese Government.

2. Second plea in law, alleging infringement of Article 101 TFEU

- It is claimed in this regard that the Commission committed a manifest error of assessment of the facts and infringed the principle of overall assessment of the evidence as regards the context within which the clause was agreed, the conduct of the parties concerned and the purpose of the clause.

3. Third plea in law, alleging infringement of the rules concerning the burden of proof and sound administration, of the rights of the defence and of the presumption of innocence as regards the evidence of the intervention by the Portuguese Government in the negotiations and in the conception and maintenance of the clause at issue.

4. Fourth plea in law, alleging infringement of Article 101 TFEU

- It is claimed in this regard that the Commission failed to provide adequate reasons for finding that, and incorrectly assessed whether, the clause was capable of restricting competition; a necessary condition to there being an infringement, at least by object, of Article 101 TFEU.

5. Fifth plea in law, alleging infringement of Article 101 TFEU

- It is claimed in this regard that the clause at issue is not a restriction by effect contrary to Article 101 TFEU, either.

In the alternative, the applicant also claims that the Commission infringed the principle of proportionality and the duty to state reasons, and committed a manifest error by rejecting mitigating circumstances and by inadequately assessing those circumstances.