

- 2 In the alternative, in the event that Question (a) on interpretation is to be answered in the negative: which steps are required to ensure that there is respect for the principles of equal treatment and impartiality, of open competition and sound administration, and for other tenderers' rights of defence and right to be heard?

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<sup>(1)</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

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**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 15 February 2017 — KP v LO**

**(Case C-83/17)**

(2017/C 168/26)

*Language of the case: German*

**Referring court**

Oberster Gerichtshof

**Parties to the main proceedings**

*Applicant:* KP

*Defendant:* LO

**Questions referred**

1. Is the rule of subsidiarity set out in Article 4(2) of the 2007 Hague Protocol on the law applicable to maintenance obligations to be interpreted as meaning that that rule is applicable only where an application initiating maintenance proceedings is lodged in a State other than the State in which the maintenance creditor is habitually resident?

If that question is answered in the negative:

2. Is Article 4(2) of the 2007 Hague Protocol on the law applicable to maintenance obligations to be interpreted as meaning that the expression 'unable ... to obtain maintenance' also refers to cases in which, on the ground of mere failure to comply with certain formal legislative conditions, the law of the previous place of residence does not provide for a right to retroactive maintenance?

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**Appeal brought on 24 February 2017 by Infineon Technologies AG against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-758/14: Infineon Technologies AG v European Commission**

**(Case C-99/17 P)**

(2017/C 168/27)

*Language of the case: English*

**Parties**

*Appellant:* Infineon Technologies AG (represented by: M. Klusmann, Rechtsanwalt, T. Lübbig, Rechtsanwalt)

*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 (Fifth Chamber) of 15 December 2016, Case T-758/14;
- annul the Decision of the European Commission No. C(2014) 6250 final of 3 September 2014 (Case AT.39574 — Smart Card Chips) in so far as Infineon Technologies AG is concerned;

- in event, reduce the fine in the amount of EUR 82 874 000 imposed on the Appellant according to paragraph 457 (a) of the Commission's Decision of 3 September 2014, to a proportionate amount;
- in event, refer the case back to the General Court for reconsideration;
- order the Defendant to pay the costs.

### **Pleas in law and main arguments**

In essence the Appellant submits that:

- the General Court failed to have regard to its obligation to carry out a sufficient review of the contested Decision, as provided for in Article 263 TFEU, in particular due to the General Court in the present case having adopted an erroneous approach of an incomplete selective judicial review. Despite all of the contacts at issue in the Decision having been contested by the Appellant, the General Court only reviewed less than half of these contacts, without providing sufficient reasoning as to the selection of particular contacts to be reviewed or not to be reviewed and without any legal basis for doing so;
- the Commission and the General Court, respectively, erred in law in respect of the application of Article 101 TFEU, in particular due to the finding of an 'overall' restriction of competition by object on the part of the Appellant, mainly through an exchange on general market trends and forecasts on pricing developments. Moreover, the Commission and General Court failed to have regard to the conditions for establishing a single and continuous infringement, as applied by the Court in its case-law;
- the Commission and the General Court, respectively, erred in law in respect of the calculation of the fine imposed on the Appellant. In particular, the General Court failed to consider the effects arising from its own incomplete selective review (with only a few of the contested contacts at issue being verified) and, consequently, failed to have regard to its unlimited jurisdiction with regard to the fine imposed. The General Court moreover erred in — and failed to sufficiently state reasons for — including the non-SIM revenues of the Appellant which led to the fine being excessive and thus disproportionate.

Further arguments relate to several distortions of evidence by the General Court, an erroneous allocation of the burden of proof regarding potentially unreliable evidence and errors of law relating to evidence used by the Commission against the Appellant which was not disclosed throughout the Commission proceedings.

- In the alternative, the Judgment is vitiated by a breach of the principle of proportionality, in particular in so far as the General Court failed to grant to the Appellant a sufficient fine reduction due to its limited participation in the infringement at issue, an insufficient consideration of mitigating factors and in terms of the absolute amount of the fine imposed on the Appellant being disproportionate.

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**Appeal brought on 24 February 2017 by Gul Ahmed Textile Mills Ltd against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-199/04 RENV: Gul Ahmed Textile Mills Ltd v Council of the European Union**

**(Case C-100/17 P)**

(2017/C 168/28)

*Language of the case: English*

### **Parties**

*Appellant:* Gul Ahmed Textile Mills Ltd (represented by: L. Ruessmann, avocat, J. Beck, Solicitor)

*Other parties to the proceedings:* Council of the European Union, European Commission

### **Form of order sought**

The Appellant claims that the Court should:

- declare the Appeal admissible and well-founded;