

The proof of that collusion was adduced by the appellant who demonstrated that the undertakings participating in standardisation work had been contacted beforehand in order to be granted licences on his patent portfolio. Following the failure of the negotiations, all of the contacted undertakings took part in standardisation work at the ISO and none of them complied with its obligations of stating the knowledge of all patents that could be linked to the standard being drawn up. Those factors make up the collusion infringement that led to the exponential increase in the number of counterfeiters.

The appellant also relies on the ground of appeal alleging an error in law in relation to the level of proof required by the Commission and then by the General Court in its order to demonstrate the existence of collusion between the undertakings referred to.

The second ground of appeal alleges the failure to consider the facts brought to the knowledge of the General Court. According to the appellant, the General Court held that the arguments of the appellant regarding market sharing were not raised during the administrative procedure. However, the appellant raised that argument during the administrative procedure, in a letter of 15 May 2018 addressed to the Commission, more than two years before the final decision of the Commission rejecting the appellant's complaint. Therefore, the General Court erred in law by failing to determine the actual content of proof brought to its knowledge.

Lastly, the third ground of appeal alleges an error of law of the General Court in the finding of the content of proof. The General Court considers that the appellant requests it, in essence, to find an infringement of the competition rules. However, the appellant submits that the Commission, in assessing the proper weight of the matters brought to its attention during the administrative procedure, should necessarily have found collusion between the undertakings referred to by the complaint and consequently an infringement of the competition rules.

As to the finding of discrimination suffered by the appellant, the appellant, in his application, merely expanded on the arguments already submitted during the administrative procedure and explained the manifest error of assessment committed by the Commission by not taking into consideration the facts adduced by the appellant. By maintaining that the appellant did not provide any argument referring to the manifestly contested decision, the General Court breached its obligation to state reasons while all the arguments of the appellant sought, however, to demonstrate the manifest error of assessment committed by the Commission.

As to the characterisation of collusion, the appellant also criticises the Commission for a manifest error of assessment. The appellant by no means sought a direct finding of an infringement of the competition rules from the General Court, but rather that it hold that the analysis of facts brought to the knowledge of the Commission should have led the Commission undisputedly to find itself an infringement of the competition rules and a clear infringement of its own recommendations.

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**Request for a preliminary ruling from the Županijski sud u Puli-Pola (Croatia) lodged on  
30 November 2021 — Criminal proceedings against GR, HS, IT, INTER CONSULTING d.o.o., in  
liquidation**

**(Case C-726/21)**

(2022/C 64/35)

*Language of the case: Croatian*

**Referring court**

Županijski sud u Puli-Pola

**Parties to the main proceedings**

GR, HS, IT, INTER CONSULTING d.o.o., in liquidation

### Question referred

In assessing whether there has been an infringement of the *ne bis in idem* principle, is it possible to compare only the facts cited in the enacting terms of the indictment of the Županijsko državno odvjetništvo u Puli-Pola (Pula Public Prosecutor's Office, Croatia) of 28 September 2015 with the key facts cited in the enacting terms of the indictment of the Staatsanwaltschaft Klagenfurt (Klagenfurt Public Prosecutor's Office, Austria) of 9 January 2015, and in the operative part of the judgment of the Landesgericht Klagenfurt (Klagenfurt Regional Court) of 3 November 2016, upheld by judgment of the Oberster Gerichtshof (Supreme Court of the Republic of Austria) of 4 March 2019, or is it possible to compare the facts cited in the enacting terms of the indictment of the Županijsko državno odvjetništvo u Puli-Pola (Pula Public Prosecutor's Office) with the facts cited in the grounds of the judgment of the Landesgericht Klagenfurt (Klagenfurt Regional Court) of 3 November 2016, upheld by judgment of the Oberster Gerichtshof (Supreme Court of the Republic of Austria), and which were the subject of the preliminary investigation conducted by the Staatsanwaltschaft Klagenfurt (Klagenfurt Public Prosecutor's Office) against several persons, in particular against GR and HS, and which were subsequently omitted from the indictment by the Staatsanwaltschaft Klagenfurt (Klagenfurt Public Prosecutor's Office) of 9 January 2015 (and were not cited in those enacting terms)?

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**Appeal brought on 30 November 2021 by Coopérative des artisans pêcheurs associés (CAPA), Jean Derosière, Fabien Hagneré and Others against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 15 September 2021 in Case T-777/19 CAPA and Others v Commission**

**(Case C-741/21 P)**

(2022/C 64/36)

*Language of the case: French*

### Parties

*Appellants:* Coopérative des artisans pêcheurs associés (CAPA), Jean Derosière, Fabien Hagneré and Others (represented by: M. Le Berre, avocat)

*Other parties to the proceedings:* European Commission, Comité régional des pêches maritimes et des élevages marins Hauts-de-France, Fonds régional d'organisation du marché du poisson (From Nord), Organisation de producteurs CME Manche-Mer du Nord (OP CME Manche-Mer du Nord), French Republic, Ailes Marines SAS, Éoliennes Offshore des Hautes Falaises, Éoliennes Offshore du Calvados, Parc du Banc de Guérande, Éoliennes en Mer Dieppe Le Tréport, Éoliennes en Mer Îles d'Yeu et de Noirmoutier, Herviou & Associés SARL

### Form of order sought

The appellants claim that the Court should:

- declare that the appeal is admissible and well founded;
- set aside the judgment of the General Court of the European Union of 15 September 2021 in Case T-777/19, *CAPA and Others v European Commission*;
- declare that the application lodged before the General Court is admissible;
- refer the case back to the General Court;
- order the European Commission to pay the costs of the proceedings.

### Grounds of appeal and main arguments

In support of their appeal, the appellants rely on six grounds of appeal.

The first ground of appeal alleges failure to carry out an effective judicial review. According to the appellants, the General Court failed to exercise fully its judicial powers when it did not examine whether the aid at issue would be likely to have a specific effect on the appellants.

The second ground of appeal alleges inaccurate findings and distortion of the clear sense of the evidence. According to the appellants, the General Court made inaccurate findings in respect of some of the evidence submitted by the appellants and it distorted the clear sense of some other items of evidence also submitted by the appellants, regarding, inter alia, the effect of the aid at issue on the appellants' activities.