

2. Second plea in law, that alternatively, even if the principle of *ultra petita* was engaged, the General Court should have held that it was nonetheless free — indeed obliged — to annul the contested Decision entirely in order to give effect to its conclusions that there was a defect in the contested Decision which violated superior norms of law, namely the principles of legality and of effective judicial protection under Article 47 of the Charter on Fundamental Rights.

Appeal brought on 27 February 2016 by Orange Polska SA against the judgment of the General Court (Eighth Chamber) delivered on 17 December 2015 in Case T-486/11: Orange Polska SA v European Commission

(Case C-123/16 P)

(2016/C 191/12)

Language of the case: English

Parties

Appellant: Orange Polska SA (represented by: D.M. Beard QC, A. Howard, Barristers, M. Modzelewska de Raad, adwokat, P. Paśnik, adwokat)

Other parties to the proceedings: European Commission, Polska Izba Informatyki i Telekomunikacji, European Competitive Telecommunications Association

Form of order sought

The appellant claims that the Court should:

- annul the Judgment;
- annul the Decision in its entirety; alternatively
- annul Article 2 of the Decision in its entirety; or in the alternative,
- reduce the fine there stated, as appropriate; or in the alternative
- remit the decision in relation to the fine to the Commission; and
- order the Commission to pay the costs.

Pleas in law and main arguments

In support of its appeal, the Appellant raises three pleas in law — the first plea challenges the substantive validity of the finding of infringement in the contested Commission Decision, whereas as the latter two are directed against the level of the fine imposed by virtue of Article 2 of the Decision.

- a. First, the Appellant contends that the General Court has committed an error of law and reasoning by failing to require the Commission to demonstrate any legitimate interest in pursuing an investigation and in adopting an infringement decision regarding historic conduct.
- b. Secondly, the General court has committed a number of errors of law and/or distorted the evidence in upholding the Commission's appraisal of the impact of the infringement for the purpose of calculating the level of the fine.

- c. Thirdly, the General court has committed errors of law and has manifestly erred in its appreciation of the evidence in refusing to give credit for the investments made by Orange so as to reduce the fine due to mitigating circumstances.

Request for a preliminary ruling from the Prim'Awla tal-Qorti Ċivili (Malta) lodged on 29 February 2016 — Malta Dental Technologists Association and Others v Superintendent tas-Saħħa Pubblika, Kunsill tal-Professjonijiet Kumplimentari għall-Medicina

(Case C-125/16)

(2016/C 191/13)

Language of the case: Maltese

Referring court

Prim'Awla tal-Qorti Ċivili

Parties to the main proceedings

Applicants: Malta Dental Technologists Association and Others

Defendants: Superintendent tas-Saħħa Pubblika, Kunsill tal-Professjonijiet Kumplimentari għall-Medicina

Questions referred

1. Is the prohibition by the Maltese health authorities, or their refusal to grant recognition to the profession of clinical dental technologists/denturists, whereby, despite the absence of discrimination in law, individuals from other Member States who have made an application in this respect are in practice precluded from establishing their profession in Malta, incompatible with the principles and the legal provisions regulating the creation of the single market, in particular those resulting from Articles 49 TFEU, 52 TFEU and 56 TFEU, in a situation where there is no risk to public health?
2. Should Directive 2005/36/EC ⁽¹⁾ of the European Parliament and of the Council of 7 September 2005, known as the Professional Qualifications Directive, be applied with respect to clinical dental technologists in view of the fact that, should a denture prove to be defective, the only consequence would be that the defective dental appliance would have to be modified or replaced, without any risk to the patient?
3. Can the prohibition by the Maltese health authorities, which is being contested in the present case, serve to ensure the aim of having a high level of public health protection, when any defective denture can be replaced without any risk to the patient?
4. Does the way in which the defendant, the Superintendent of Public Health, interprets and enforces Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 with respect to clinical dental technologists who have applied for recognition by the same Maltese health authorities constitute an infringement of the principle of proportionality?

⁽¹⁾ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22).