

7. Seventh plea in law, alleging that the Decision is inadequately reasoned contrary to Article 296 TFEU:

— The Decision is inadequately reasoned contrary to Article 296 TFEU in that it assumes the existence of that which was incumbent upon the Commission to prove.

8. Eighth plea in law, alleging that the Decision infringes an essential procedural requirement:

— The Decision infringes the applicant's right of defence by introducing new allegations and evidence without providing the applicant with an opportunity to be heard.

9. Ninth plea in law, alleging that the Commission has failed to demonstrate that the applicant committed the alleged infringement intentionally or negligently:

— The facts at issue raise novel and complex issues for which there was no precedent at the time when the Settlement Agreements were concluded. There is no basis for a finding that what the Commission alleges is an infringement, was committed in negligent or intentional violation of the law.

**Action brought on 30 August 2013 — Merck v Commission**

(Case T-470/13)

(2013/C 325/74)

*Language of the case: English*

#### Parties

*Applicant:* Merck KGaA (Darmstadt, Germany) (represented by: B. Bär-Bouyssi re, K. Lillerud, L. Voldstad, B. Marschall, P. Sabbadini, R. De Travieso, M. Holzh user, S. O., lawyers, M. Marelus, Solicitor, R. Kreisberger and L. Osepciu, Barristers)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the Court should:

— Annul Articles 1(1), 2(1) of Commission's Decision C(2013) 3803 final of 19 June 2013 in case COMP/39.226 — Lundbeck), and Articles 2(5), 3 and 4 insofar as these are addressed to Merck;

— In the alternative, annul or reduce the penalty imposed on Merck; and

— In any event grant Merck its costs.

#### Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in its interpretation of the concept of a restriction by object within the meaning of Article 101.
2. Second plea in law, alleging that the Commission's theory of harm was fundamentally flawed.
3. Third plea in law, alleging that the Commission's approach is contrary to the principle of legal certainty.
4. Fourth plea in law, alleging that the Commission erred in failing to take any, or any adequate, account of the factual, economic and legal context, which showed that, absent the Agreements, GUK would not have launched citalopram any more quickly in the UK or other EEA markets.
5. Fifth plea in law, alleging that the Commission erred in its assessment of the scope of the Agreements between Lundbeck and GUK.
6. Sixth plea in law, alleging that the Commission erred in law and in fact in finding that Lundbeck and GUK were potential competitors.
7. Seventh plea in law, alleging that the Commission made a manifest error of assessment in concluding that GUK had an anti-competitive intention in entering into the UK and EEA Agreements.
8. Eighth plea in law, alleging that the Commission erred in fact in its findings as to the size and purpose of the value transfer between Lundbeck and GUK.
9. Ninth plea in law, alleging that the Commission fails properly to assess the arguments raised by the parties under Article 101(3) TFEU.
10. Tenth plea in law, alleging that the Commission has failed to have due regard to evidence from Merck rebutting the presumption of decisive influence and has accordingly erred in fact and law in finding that presumption not rebutted.
11. Eleventh plea in law, alleging that the Commission's decision should be set aside on ground of undue delay.

12. Twelfth plea in law, alleging that the Commission has breached the parties right to be heard.
13. Thirteenth plea in law, alleging that the Commission erred in its assessment of penalties.

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**Action brought on 30 August 2013 — Xellia Pharmaceuticals and Zoetis Products v Commission**

(Case T-471/13)

(2013/C 325/75)

*Language of the case: English*

**Parties**

*Applicant:* Xellia Pharmaceuticals ApS (Copenhagen, Denmark) and Zoetis Products, LLC (New Jersey, United States) (represented by: D. Hull, Solicitor)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- Annul Articles 1(3), 2(3) and 3 of Commission Decision C(2013) 3803 final of 19 June 2013 (COMP/39.229 — Lundbeck) in so far as they concern the applicants; or
- In the alternative, declare Article 1(3) of the Decision partially null and void, and reduce the amount of the fine imposed; and
- Order the Commission to bear the costs of the proceedings.

**Pleas in law and main arguments**

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

1. First plea in law, alleging a manifest error of assessment in finding that the restrictions set forth in the Settlement Agreement exceeded the scope of Lundbeck's patents.
2. Second plea in law, alleging an error of law in using the wrong legal standard to determine whether Alpharma was a potential competitor; and a manifest error of assessment in finding that Alpharma was a potential competitor.
3. Third plea in law, alleging a manifest error of assessment in finding that the Settlement Agreement constituted a restriction of competition 'by object'.

4. Fourth plea in law, alleging an error of law in finding a restriction of competition within the meaning of Article 101 despite the fact that the Settlement Agreement solely reflected the exclusionary scope of Lundbeck's patents, which, as a matter of law, must be presumed to be valid.
5. Fifth plea in law, alleging violation of the Applicants' rights of defence by belatedly notifying them of (i) the existence of the investigation and (ii) the Commission's specific objections.
6. Sixth plea in law, alleging violation of the principle of non-discrimination by addressing the Decision to Zoetis.
7. Seventh plea in law, alleging an error of law in calculating the fine without taking into account the limited gravity of the alleged infringement and a manifest error of assessment in setting the fine proportionately higher than the fine imposed on Lundbeck and failing to take into account the uncertainty in the law, the less serious nature of the infringement, and the geographic scope.
8. Eighth plea in law, alleging a manifest error of assessment in applying the 10 % fine cap to A.L. Industrier based upon its 2011 turnover instead of its significantly higher 2012 turnover, thereby forcing the Applicants to pay a higher proportion of the fine

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**Action brought on 30 August 2013 — H. Lundbeck and Lundbeck v Commission**

(Case T-472/13)

(2013/C 325/76)

*Language of the case: English*

**Parties**

*Applicants:* H. Lundbeck A/S (Valby, Denmark); and Lundbeck Ltd (Milton Keynes, United Kingdom) (represented by: R. Subiotto, QC, and T. Kuhn, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- Annul the Commission's decision C(2013) 3808 final of 19 June 2013, served to the applicants on 21 June 2013, in case COMP/39.226 — Lundbeck;