

2. If so, must the social-policy objectives legitimising the creation of the ‘contrato de relevo’ model of contract also be deemed to justify, under clause 4.1 of the abovementioned framework agreement, the difference in treatment relating to the lower amount of compensation for termination of the employment relationship when the employer freely decides that such a ‘contrato de relevo’ should be for a fixed term?
3. For the purposes of guaranteeing the practical effect of Directive 1999/70 EC, if there should be found to be no reasonable justification under clause 4.1, is the unequal treatment of temporary and permanent employees with regard to compensation for termination of their contracts, laid down in the Spanish legislation referred to above, to be interpreted as constituting discrimination of the kind prohibited by Article 21 of the Charter, and therefore as contrary to the principles of equal treatment and non-discrimination that are part of the general principles of EU law?

⁽¹⁾ OJ 1999 L 175, p. 43.

Appeal brought on 17 November 2016 by Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd, Ranbaxy (UK) Ltd against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-460/13: Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd, Ranbaxy (UK) Ltd v European Commission

(Case C-586/16 P)

(2017/C 030/27)

Language of the case: English

Parties

Appellants: Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd, Ranbaxy (UK) Ltd (represented by: R. Vidal, A. Penny, Solicitors, B. Kennelly QC, Barrister)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- Set aside the General Court’s Judgment in Case T-460/13 insofar as it dismisses their application to annul the decision of the European Commission of 19 June 2013 in Case COMP/39226 — Lundbeck (citalopram), which found an infringement by object of Article 101(1) TFEU and Article 53 EEA, insofar as it concerns the Appellants;
- Annul Article 1(4) of the Decision insofar as it concern the Appellants;
- Annul Article 2(4) of the Decision insofar as it imposes fines on the Appellants or, in the alternative, reduce the amount of the fine; and
- Order the Commission to pay the Appellants’ legal and other costs and expenses in relation to this matter and any other measures that this Court considers appropriate.

Pleas in law and main arguments

1. The General Court misapplied the test for demonstrating an infringement of Article 101(1) ‘by object’ established by the Court of Justice of the European Union (‘CJEU’) in *Cartes Bancaires v Commission* C-67/13 P, ECLI: EU:C:2014:2204 (‘*Cartes Bancaires*’). The agreement between the Appellants and H. Lundbeck A/S (‘Lundbeck’) which took effect on 16 June 2002 (the ‘Agreement’²) was not by its very nature harmful to competition. Its purpose was *prima facie* to settle a patent dispute between the Appellants and Lundbeck. Whether the Agreement was in fact harmful to competition required the Commission to examine its effects.

2. In finding that there was material ‘potential competition’ in existence between the Appellants and Lundbeck at the time of the Agreement, the General Court manifestly distorted the evidence in the Court’s file. The Commission was required to demonstrate objectively that the Appellants had a real concrete possibility of entering the market in an economically viable manner. The evidence demonstrated that (a) such entry was not a real or concrete possibility, either objectively or in terms of economic viability, prior to the expiry of the Agreement; and (b) in the negotiations leading to the Agreement, the Appellants had no incentive to be truthful regarding their readiness to enter the market and tricked Lundbeck into agreeing both to supply its own product to the Appellants at a discounted price and making a payment to the Appellants. This in fact allowed the Appellants to enter the market immediately which crucially they could not otherwise have done. The General Court failed to take account of the key distinction between the Appellants and the other generic manufacturers who entered into agreements with Lundbeck, which is the Appellants had no realistic and concrete possibility of obtaining an marketing authorization within the timeframe of the Agreement.
3. In any event, no penalty should have been imposed on the Appellants. At the time of the Agreement, the Commission’s Guidelines did not treat such an agreement as constituting an infringement ‘by object’. It was a novel case in which Lundbeck had prima facie protection from competition in the form of its patents and regulatory barriers where the Appellants in fact improved their ability to compete with Lundbeck on the relevant market, by obtaining discounted supplies of Lundbeck’s product which the Appellants could label as their own. The Appellants’ penalty ignored the novelty of the infringement and the Commission’s unreasonable delay: notice of the investigation could easily have been provided to the Appellants more than five years prior to the actual notice.

Appeal brought on 18 November 2016 by Generics (UK) Ltd against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-469/13: Generics (UK) v Commission

(Case C-588/16 P)

(2017/C 030/28)

Language of the case: English

Parties

Appellant: Generics (UK) Ltd (represented by: I. Vandenborre, advocaat, T. Goetz, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— annul the judgment or take such other action as justice may require.

Pleas in law and main arguments

1. **First plea-in-law.** The Court has failed to demonstrate that the Settlement Agreements constitute infringements ‘by object’, within the meaning of the Cartes Bancaires judgment. In particular, the Court does not explain how the Settlement Agreements reveal in themselves a sufficient degree of harm to competition without the need to assess their actual and potential effects. Instead, the Court expresses doubt and uncertainty in relation to critical points of the analysis of the Settlement Agreements.
2. **Second plea-in-law.** The evidence supporting the Court’s findings does not meet the requirement of accurate, reliable, consistent and comprehensive evidence, which this Court has identified as necessary to meet the burden of proving a ‘by object’ infringement.
3. **Third plea-in-law.** The Court reverses the burden of proof when it imposes a requirement on Generics (UK) to demonstrate that litigation certainly would have ensued in case of a launch at risk, and that Generics (UK) would certainly have lost in litigation, to support the legality of the Settlement Agreements.