

The General Court incorrectly used the open and public distancing test to reverse the burden of proof for establishing the appellant Silec's alleged infringement. The appellants submit that the General Court also erred in law in exclusively relying on the subjective perception of other participants in the alleged infringement to prove appellant Silec's participation. The appellants further consider that the General Court distorted the evidence before it, and also violated the obligation of professional secrecy (Article 339 TFEU), when finding that the appellant Silec participated in the alleged infringement.

With their second plea, the appellants contend that the General Court violated the principle of equal treatment when refusing to qualify the appellant Silec's involvement in the alleged infringement as that of a 'fringe player.'

The appellants submit that the General Court unlawfully took account of Safran/Sagem/Sagem Communications' behaviour when assessing the individual involvement of the appellant Silec for the purpose of assessing the amount of the fine. The appellants submit that the General Court itself moreover provides manifestly contradictory reasoning in this regard. The appellants further contend that the General Court compares the wrong factual situations when concluding that the Commission does not discriminate against the appellant Silec when refusing to qualify it as a fringe player.

⁽¹⁾ Commission Decision of 2 April 2014 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.39610 — Power Cables) (notified under document C(2014) 2139 final) (OJ 2014, C 319, p. 10).

**Request for a preliminary ruling from the Szombathelyi Közigazgatási és Munkaügyi Bíróság
(Hungary) lodged on 24 September 2018 — UTEP 2006. SRL v Vas Megyei Kormányhivatal Hatósági
Főosztály, Hatósági, Építésügyi és Oktatási Osztály**

(Case C-600/18)

(2018/C 436/40)

Language of the case: Hungarian

Referring court

Szombathelyi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: UTEP 2006. SRL

Defendant: Vas Megyei Kormányhivatal Hatósági Főosztály, Hatósági, Építésügyi és Oktatási Osztály

Question referred

Should [Article] 92 TFEU be interpreted as precluding an interpretation of Article 12/A of the a kis- és középvállalkozásokról, fejlődésük támogatásáról szóló 2004. [évi] XXXIV. törvény (Law No XXXIV of 2004 on small and medium-sized enterprises and aid for their development; 'KKV Law') and the practice of the authorities followed in this respect, according to which Article 12/A of the KKV Law cannot be applied to enterprises (legal entities) that are not registered in Hungary, but in another Member State, but that are otherwise in line with the concept of small and medium-sized enterprise laid down by that Law?